

METROPOLITAN AREA PLANNING COMMISSION

MINUTES

June 10, 1999

The regular meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission was held Thursday, June 10, 1999 at 1:15 p.m. in the Planning Department Conference room, 10th Floor, City Hall, 455 North Main, Wichita, Kansas. The following members were present: Bill Johnson (late arrival); Larry Consolver (late arrival); George Fulp; Frank Garofalo; Mike Haggard; Bud Hentzen; John W. McKay, Jr.; Susan Osborne-Howes; George Platt; Ray Warren; and Deanna Wheeler. John C. Frye, Richard Lopez and Harley Miles were not present. Staff members present were Marvin S. Krout, Secretary; Dale Miller, Assistant Secretary; Joe Lang, Senior Assistant City Attorney; Keith Gooch, Senior Planner; Donna Goltry, Senior Planner; and Karen Wolf, Recording Secretary.

Johnson was not present; Garofalo assumed the chair.

1. Discussion on proposed amendments to the Unified Zoning Code.

MILLER "This is the consideration of the amendments to the Unified Zoning Code. I believe this is the third time it has been on the agenda. The initial deferral, I believe, was because Mr. Warren wanted more time to look at it, and then at the last Planning Commission meeting, two of the small cities said they needed a little more time to look at it. So we deferred it then, and this is the third time for your consideration. There was a blue memo that tried to summarize the majority of the changes. One of the key things that precipitated this was an attempt to provide for being able to do cluster subdivisions in rural areas. As you know, those of you that are on the Subdivision Committee spend a lot of time trying to figure out how to divide rural land so that they can become building sites and still preserve it if it is close enough in that services are likely to be there sometime in the near future. We think that we have come up with a proposal that may make that less painful than what it has been in the past. That was one of the main provisions that we wanted to try to address.

The other things were just more or less clean-up type things that we were aware of that had either caused a problem or we thought might cause problems in terms of way things were worded, so we proposed those changes. Then, I think, finally, the last piece was the request by the folks that live up around 101st and Meridian where they have semi-tractor/trailer rigs and park them on 5 or 10 acre tracts, which is currently not a legal use. They appeared before this board maybe a month ago or more and asked you to consider making that change. Staff has put that in that we would handle that as a Conditional Use so each case could be evaluated on its own. I think most of the proposals are outlined in the blue memo. If there are questions, we will try and answer them now."

GAROFALO "Does anyone have any questions or want to discuss this?"

OSBORNE-HOWES "I just want to discuss one of them. Is this the time to do that? Okay. I am having a little trouble with No. 4 under the proposed changes."

MILLER "The reason for that was that currently the way that is set up now is that some applicants can end up, in order to do a project, having to go to this group to get an amendment and then also have to go to the Board of Zoning Appeals to get the variance. That delay in time and just the extra hearings, we thought at least for CUPs that it made sense to try and transfer that to this group. That way, it could all be done in one whack and when they leave this meeting they would know what they could do rather than if it was approved here, but not at BZA, it is kind of a double jeopardy thing."

OSBORNE-HOWES "I have gone on record many times before, and I will one more time, and that is, as the only member here that has also served on the Board of Zoning Appeals, I know that they have more time to look at specific issues. I think they do a better job of compromising than we do because they have fewer cases and they have more time to look at those cases.

I know that with our meetings getting longer and longer, and probably in the future will be moved to the evenings, I can see you all at midnight trying to look at some of these issues, and I am just not so sure that the best decisions will be made. I also know that the Board of Zoning Appeals has the last say on the matter, and that some of our issues then do go back to the City or the County, so I am not really sure whether this tightens things up like we think they will. Again, I think that we are taking away things that the Board of Zoning Appeals has done a good job on over the years and putting them here with the Planning Commission when our schedule is just getting longer and longer. I am not supportive of that."

GAROFALO "Do you want to respond to that, Dale or Marvin?"

KROUT "I guess Joe Lang is not here yet, and I do have a question of him about the way that is worded, and I don't have a copy of the amendments in front of me. Okay, what page is that on?"

GAROFALO "Page 100."

MILLER "I think it actually starts at the bottom of Page 99 and runs over to Page 100."

KROUT "Right. This is part of an approval for an amendment of the CUP. What we meant by that was that you don't apply separately to do a variance. But that would still go to the Board of Zoning Appeals, but if you have other reasons, if you are amending or creating a CUP, it has to go in front of the Planning Commission anyway.

For example, we have a case, and it may or may not be decided today, but we do have two cases involving an amendment to the CUP for a communication tower. They will also be required to submit separately to the Board of Zoning Appeals, a variance on the compatibility setback requirements, in order to permit a tower that tall to be located where it is. It doesn't make a lot of sense to have this applicant go to two different places, potentially get conflicting conditions and requirements. You already have it in front of you, and it is not going to add that much more time for you to deal with the issue of is this the right height? In fact, you are going to be looking at that issue as you look at that case. We are involving the citizens and asking them to go to two separate hearings before two boards. This is meant to be where you already have a CUP in front of you and we have already notified those owners. If someone just wants a height variance, whether it is a CUP or not, the wording of this should be clarified, if necessary, that applicant still has to go to the Board of Zoning Appeals."

OSBORNE-HOWES "That could be clarified then."

KROUT "That is only tentative. We will ask if it needs to be clarified further."

OSBORNE-HOWES "Let's say that we have that meeting as the MAPC and we make a decision. Does that have to go to the City or the County?"

KROUT "If you make a decision on the CUP? Okay, if it is an original CUP, it has to go to the City or the County. If it is an amendment to the CUP, amendments to CUPs can stop at the Planning Commission unless they are appealed on by an applicant or by a neighbor to the governing body."

OSBORNE-HOWES "That was another one of my concerns is that they would still have to end up going to the governing body, but with the Board of Zoning Appeals, they don't. If that could be clarified, that would take care of it."

KROUT "Okay, we will clarify that it is only accompanying other amendments or obviously, if you are establishing a CUP, then there is something else accompanying it. But we will clarify that it means when it is accompanying other amendments. I think it says that already, doesn't it Dale?"

MILLER "Yeah, that is the way we have been handling them."

OSBORNE-HOWES "When I read this, that is not how I interpreted it. Thank you."

HAGGAR "Is there anything from the small cities that you know of, Marvin, that we need to talk about, or is everything under control here?"

KROUT "We will probably want to open this up and see if anyone has any new information to provide for you. We contacted..."

MILLER "Clearwater and Cheney were the only two that contacted us. I don't see anyone from either of those cities yet."

GAROFALO "Is there anyone here who wants to speak on the changes in the Zoning Code?"

MICHELLE GOODRICH "I am with Terre Tech Land Surveying. I am not from the small towns, but I have one concern. On the changes on Page 40 and 43, instead of the minimum lot size being 2 acres and then allowing larger minimum lot size by the Health Department, I think it might be better to put the larger requirement, the 4-1/2 acres except if a developer is doing a certain type of subdivision, like the conservation cluster. And I would like to see the regulations also reflect the same little blurb in the book as the special 'SF-6' district regulations reflect on Page 48. Just to say that there is an option and call out what those different requirements would mean to a developer, I think would help a lot and encourage some of this type of development."

On Page 48, on Item 'E' Special 'SF-6' district regulations. If we could have this type of an insert for a special 'SF-20' regulations and special 'RR' regulations, it would alert developers that this option is available at those two zoning levels."

GAROFALO "Marvin or Dale, do you want to respond to that?"

KROUT "Yes. I don't have problem with writing that in. That really is our intent. I understand what Michelle is saying, and I agree with her. Apparently there is already some misinformation out there. The Health Department can probably respond, and will tell you that that is the case that people think that you are talking about simply reducing the minimum lot size from 5 acres to 2 acres for a lagoon in the Rural Residential district. We do have, still, the Subdivision Regulations that say you have to have 4-1/2 acres for a lagoon; we still have the sanitation requirements that say you have to have 5 acres for a lagoon. So it does take an exception of both of those regulations to approve anything less."

I have no problem if you are asking us to draft up some additional language that would say that the intent of reducing the lot size to less than 4-1/2 acres is in the case of a rural cluster development, where the overall gross density is still no more than 5 units per acre. That is really the intent. It may take a provision like this, or we may be able to do it in a simpler way. Our intent would be to write that into the Subdivisions Regulations eventually, because we do have a special cluster provision in the Subdivision Regulations for the 'SF-6' district."

But I think we could write in, on Pages 40 and 43, something that would maybe be a little bit simpler and give the intent that any reduction would still be to do cluster subdivisions and maintain an overall gross density no greater than 5 units per acre. That still would permit the kind of lot division in areas that are closer to cities like you saw at 143rd Street and Pawnee, where the lots were tied together by covenant, but the lots themselves were actually smaller in anticipation that maybe public water and public sewer

would be extended to that area. We do that now and I think we would still continue to honor that. That is in the Subdivision Regulations. So writing that provision in wouldn't preclude that from happening."

Johnson arrived at 1:35 p.m. and assumed the chair.

WARREN "Somewhere in here I have read where we had a minimum square footage of 40,000 square feet. Now, do we give that to the minimum of 2 acres?"

KROUT "No. We have two county districts, 'RR' Rural Residential and the 'SF-20'.

In the 'SF-20' district, which is probably more or less if you took a radius of a mile or a mile and a half outside of Wichita, the 'SF-20' is a suburban district. You are allowed to go 20,000 square feet if you have public sewer but a well; you are allowed to go to 40,000 square feet if you have both on site water and you can do a septic tank.

But in a rural residential district, the minimum is 2 acres."

WARREN "And we are not thinking of changing that. You are just going to clarify the language?"

KROUT "Right. We are just going to clarify the language that would clarify when you can go to less than 5 acres with a lagoon; we can develop wording and come back if you would like for us to see it. We could come back with wording at the next meeting that would show you how we would discuss how that reduction of less than 5 acres would be tied to a cluster development"

GOODRICH "Right. We just want to make it more narrowly defined and not have everybody think 2 acres is now the minimum for developing in the County."

KROUT "Right, and not have people think that now we are just going to approve 2 acre lots with lagoons on them."

JOHNSON "Is there anyone else here to speak on this item? Seeing none, I will bring this back to the Commission."

KROUT "We have had this on the agenda three times. If you are comfortable, I would to approve this, subject to the revised language that we are suggesting. We will bring that to you at the next session, but in the meantime, we will prepare it to go, four weeks from now, to the County Commission, so that would give you still the ability to look at that wording and give us any advice on it before we get there."

PLATT "I do think I should comment on one item. It is dear to my heart. As the author of the provisions in the Zoning Code related to universities, I feel I must chastise my colleagues for picking the first time that I have been absent from a meeting in two years to take an axe to my language. I apologize for not having been at that meeting.

Also, I shouldn't claim to be the full author of it. The author of the first draft of the university district was Hugo Wall. Bickley Foster, who is sitting in the audience, did a revision of it. He, too, is a co-author. In fact, I thought for sure he was here to defend his language. Jack Galbraith and I put together the final version. My only comment is that the reason we had, originally, in the University District, a 5 acre limitation was to preclude the possibility of someone starting, particularly a for-profit institution with a rather small building and using this as a means of avoiding some of the requirements that we might want to have in terms of particularly being in a residential neighborhood. That is why it was in there, and I am not sure that there hasn't been a situation in the 30-some years that we have had it that wouldn't warrant arguing that this was not a legitimate change, so I am not going to propose the change. But I thought I should point out the original reason for having it there."

MCKAY "I was going to make a motion that we approve this and leave Item No. 6 out until we had sat down and talked about it, because for the large universities that is find, but for Kansas Newman and Friends, where we have single-family housing and we have an area that is not maybe adjacent within half a block of the main campus core area, wouldn't be 5 acres and we wanted to do the university district because of the 5 acre minimum thing. That is all I was going to say. I am not in disagreement with what George said, but I think we do need to sit down and look because I don't want to strap Friends University or Kansas Newman with not being able to expand because of something we have written in here. Presently, I think it does handicap both of the small colleges on the west side because we are land-locked with highways and residential."

KROUT "George, since it still requires a zoning change, it is not as though it is a new use that we are slipping into the Code. It still does require a zoning change and you still have to apply all of the same principles of zoning and evaluating the use. I don't feel strongly one way or the other, but that is the reason we didn't think it would be a problem is because it is kind of just like the mini-storage. A mini- storage may be suitable if it is less than 2 acres, and it may be unsuitable if it is more than 5-acres. It all depends on the particulars of the use in its context. That is why we are still reserving judgment and keeping the public hearing process to look at these on a case-by-case basis.

That is why we thought that, as we were looking at the other areas where we are reducing the minimum lot sizes, this was not necessary as a regulation."

PLATT "I have no objection to your line of reasoning at all, and I don't see any reason to not include it. I think we do need to, simply because it may come up in the future, and it hasn't. That is the reason why I can't get very excited about it. I had to have my day in court.

MOTION: That the Metropolitan Area Planning Commission adopt the amendments to the Zoning Code as presented, subject to the rewording on the 2-acre factor on Page 40.

GAROFALO "But there was also the change that Susan was talking about."

KROUT "And that is something that we can clarify with the Law office on its way to the City Council and County Commission. The wording may be adequate or it may not be, but I think you can note, for the record, that we will look at the intention of approving variances as part of CUP amendments."

WARREN moved, **GAROFALO** seconded the motion, and it carried unanimously.

JOHNSON "Items 2/1 and 2/2 are public hearings. Is there anyone here to speak on these items? Since there isn't anyone here to speak, what is the pleasure of the Commission?"

MOTION: That the Planning Commission recommend to the governing body that the requests be approved.

WHEELER moved, **PLATT** seconded the motion, and it carried unanimously (10-0).

2/1. V-2177 – Lawrence Development, LLC, c/o Christian Ablah request the vacation of a 10 foot utility easement, described as:

The south 10 feet of the utility easement except the westernmost 10 feet on Lawrence Development 1st Addition, Wichita, Sedgwick County, Kansas, located on the southeast corner of 21st street North and Ridge Road.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the Daily Reporter of notice of this vacation proceeding one time May 18, 1999, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described utility easement, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of the utility easement described in the petition should be approved.

The Subdivision Committee recommends approval.

2/2. V-2178 – St. Francis Regional Medical Center, Inc., c/o Bob Lavelle requests the vacation of a portion of street right-of-way, described as:

The vacation of Emporia circle from the north line of Lot 1, Block 2, St. Francis Regional Medical Center Addition to the north line of Emporia Circle. Generally located north of Murdock and east of Topeka.

A. That after being duly and fully informed as to fully understand the true nature of this petition and the propriety of granting the same, the MAPC makes the following findings:

1. That due and legal notice has been given by publication as required by law, by publication in the daily Reporter of notice of this vacation proceeding one time May 18, 1999, which was at least 20 days prior to this public hearing.
2. That no private rights will be injured or endangered by the vacation of the above-described street right-of-way, and the public will suffer no loss or inconvenience thereby.
3. In justice to the petitioner(s), the prayer of the petition ought to be granted.

B. Therefore, the vacation of a street right-of-way described in the petition should be approved, subject to the following conditions:

1. The applicant shall either guarantee the abandonment of the water line prior to the request going to City Council, abandon the water line prior to the case being heard by city Council, or provide a temporary easement until such time the water line is abandoned.
2. The applicant shall relocate the existing sprinkler system and any other facilities as required in a matter deemed appropriate by the City of Wichita Fire Department.

3. Any relocation or reconstruction of utilities made necessary by this vacation shall be the responsibility of the applicant.
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JOHNSON "We will now take items 2/3 through 2/6. Is there anyone here to speak on any of those items? Seeing none, I will bring it back to the Commission."

Subdivision Committee items 2/3, 2/4, 2/5, and 2/6 were approved, subject to the Subdivision Committee recommendations.

WHEELER moved, **OSBORNE-HOWES** seconded the motion, and it carried unanimously (10-0).

2/3. S/D 99-38 – One-step final plat of WINTER FARM ADDITION, located on the west side of 263rd Street West, north of 69th Street North.

- A. Since sanitary sewer and municipal water are not available to serve this property, the applicant shall contact the Environmental Health Division of the Health Department to find out what tests may be necessary and what standards are to be met for approval of on-site sewerage and water facilities. A memorandum shall be obtained specifying approval. Standard soil testing is required.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. County Engineering needs to comment on the status of the applicant's drainage plan and the accuracy of the floodway reserve boundaries. The drainage plan is approved.
- D. Bill Hancock is the only signature required in the County Commissioners signature block.
- E. The 30-ft setback needs to be increased to 35 feet to comply with the required 85-ft setback from the centerline of County roads.
- F. The lot depth to width ratio exceeds the 2.5 to 1 standard and a modification will need to be granted if this plat is approved.
- G. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- H. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of storm water.
- I. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- J. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- K. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- L. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- M. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- N. Perimeter closure computations shall be submitted with the final plat tracing.
- O. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- P. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.

- Q. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.
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2/4. S/D 99-37 – One-step final plat of WESTWOOD HILLS 3RD, on the west side of Tyler, south of Maple.

- A. City Engineering has required petitions for City water and sanitary sewer.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A drainage guarantee is required. A cross-lot drainage easement is required; or else a drainage easement platted along the east line of Lot 2.
- D. In conformance with the CUP, the plat proposed one access opening along Tyler and one opening along University Avenue.
- E. The final plat tracing shall reference a tie point to a section corner.
- F. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review
- G. As required by the sidewalk ordinance, sidewalks shall be provided along University Avenue and Maybelle Avenue. A sidewalk certificate shall be provided.
- H. A CUP Certificate shall be submitted identifying the approved CUP (referenced s DP-97) and its special conditions for development on this property.
- I. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of storm water.
- J. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- K. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- L. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- M. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- N. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- O. Perimeter closure computations shall be submitted with the final plat tracing.
- P. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- Q. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- R. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.
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2/5. S/D 99-39 – One-step Final Plat of HUNTER HEALTH CLINIC ADDITION, located on the northwest corner of Central and Grove.

- A. Existing municipal services appear to be available to serve the site. City Engineering needs to verify if any easements or guarantees are required. A guarantee for the paving of the alley is required. The sidewalk needs to be relocated along Grove.
- B. If improvements are guaranteed by petition, a notarized certificate listing the petitions shall be submitted to the Planning department for recording.
- C. City Engineering needs to comment on the status of the applicant's drainage plan. The drainage plan is approved. A drainage guarantee is required which may be part of the alley paving petition.
- D. Traffic Engineering needs to comment on the access controls. Two access openings along both Central and Spruce have been platted. The applicant shall guarantee the closure of any driveway openings being located in areas of complete access control. The access controls are acceptable.
- E. The Applicant is reminded that a platting binder is required with the final plat. Approval of this plat will be subject to submittal of this binder and any relevant conditions found by such a review.
- F. The plat's text shall include language that a drainage plan has been developed for the plat and that all drainage easements, rights-of-way, or reserves shall remain at established grades or as modified with the approval of the applicable City or County Engineer, and unobstructed to allow for the conveyance of storm water.
- G. The applicant shall install or guarantee the installation of all utilities and facilities which are applicable and described in Article 8 of the MAPC Subdivision Regulations. (Water service and fire hydrants required by Article 8 for fire protection shall be as per the direction and approval of the Chief of the Fire Department.)
- H. The applicant's engineer is advised that the Register of Deeds is requiring the name(s) of the notary public, who acknowledges the signatures on this plat, to be printed beneath the notary's signature.
- I. To receive mail delivery without delay, and to avoid unnecessary expense, the applicant is advised of the necessity to meet with the U.S. Postal Service Growth Management Coordinator (phone 316-729-0102) prior to development of the plat so that the type of delivery, and the tentative mailbox locations can be determined.
- J. The applicant is advised that various State and Federal requirements [specifically but not limited to the Army Corps of Engineers, Kanopolis Project Office, Rt. 1, Box 317, Valley Center, KS 67147] for the control of soil and wind erosion and the protection of wetlands may impact how this site can be developed. It is the applicant's responsibility to contact all appropriate agencies to determine any such requirements.
- K. The owner of the subdivision should be aware of the fact that the development of any subdivision greater than five (5) acres in size may require an NPDES Storm Water Discharge Permit from the Kansas Department of Health and Environment in Topeka. Further, on all construction sites, the City of Wichita requires that best management practices be used to reduce pollutant loadings in storm water runoffs.
- L. Perimeter closure computations shall be submitted with the final plat tracing.
- M. Recording of the plat within thirty (30) days after approval by the City Council and/or County Commission.
- N. The representatives from the utility companies should be prepared to comment on the need for any additional utility easements to be platted on this property.
- O. The applicant is reminded that a disk shall be submitted with the final plat tracing to the Planning Department detailing this plat in digital format in Release 13 version of AutoCAD. This will be used by the City and County GIS Department.

2/6. D-1761 – Dedication of a Sanitary Sewer Easement for property located north of Kellogg and west of Maize Road, described as:

The south 2 feet of the north 10 feet; and the east 2 feet of the west 10 feet of Lot 45, Cedar Lane Third Addition.

This dedication is a requirement of Lot Split No. L/S 0934, and is being dedicated for construction and maintenance of public utilities.

BILL JOHNSON, Chair, read the following zoning procedural statement which is applicable to all City of Wichita zoning cases:

Before we begin the agenda, I would like to take this opportunity to welcome members of the public to this meeting of the Metropolitan Area Planning Commission. Copies of the agenda for today's meeting, the public hearing procedure, and copies of staff reports on zoning items are available at the table nearest to the audience.

The Commission's bylaws limit the applicant on a zoning or subdivision application and his or her representative(s) to a total of ten

minutes of speaking time at the start of the hearing on that item, plus up to two minutes at the conclusion of that hearing. All other persons wishing to speak on agenda items are limited to five minutes per person. However, if they feel that it is needed and justified, the Commission may extend these times by a majority vote.

All speakers are requested to state your name and address for the record when beginning to speak. When you are done speaking, please write your name and address, and the case number, on the sheet provided at the table nearest to the audience. This will enable staff to notify you if there are any additional proceedings concerning that item. Please note that all written and visual materials you present to the Commission will be retained by the Secretary as part of the official record. If you are not speaking, but you wish to be notified about future proceedings on a particular case, please sign in on that same sheet.

The Planning Commission is interested in hearing the views of all persons who wish to express themselves on our agenda items. However, we ask all speakers to please be as concise as possible, and to please avoid long repetitions of facts or opinions which have already been stated.

For your information, the Wichita City Council has adopted a policy for all City zoning items, which is also available at the table with the other materials. They rely on the written record of the Planning Commission hearings and do not conduct their own additional public hearings on these items.

ZONING:

- 3a. Case No. DP-126 Amendment #1** – Carriage Park Center Associates c/o Tony Utter (Owner), Cellular One c/o Bill Ames and Baughman Company c/o Russ Ewy request an amendment to Parcel 3 of the Central Avenue Plaza CUP; and
- 3b. Case No. Z-3321** – Carriage Park Center Associates c/o Tony Utter (Owner), Cellular One c/o Bill Ames and Baughman Company c/o Russ Ewy, request a zone change from "LC" Limited Commercial to "GC" General Commercial on property described as:

Lot 3, Block 2, Central Avenue Plaza Addition, an Addition to Wichita, Kansas, Sedgwick County, Kansas, described as commencing at the SW corner of said Lot 3, thence east along the south line of said Lot 3, 125.00 feet on a bearing of S 89° 53'34"E; thence north at a right angle to said south line, 68.37 feet said point being the southeast corner of existing building; thence northwesterly along said building, 3.47 feet on a bearing of N85 ° 32'33" W for a point of beginning; thence continuing northwesterly along said building, 68.00 feet on a bearing of N85 ° 32' 33" W; thence southwesterly at a right angle to said building, 25.00 feet; thence southeasterly parallel to said building 68.00 feet thence northeasterly, 25.00 feet to beginning. Generally located north of Central and east of Edgemoor.

KEITH GOOCH, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant proposes to amend Parcel 3 of the Central Avenue Plaza CUP (DP-126) to allow, as a permitted use, a 120 foot communication tower and to rezone 1,700 square feet from "LC" Limited Commercial to "GC" General Commercial. The application area is located north of Central and east of Carriage Parkway. Central Avenue Plaza has developed along a north-south axis, with two major sets of buildings facing each other, across Carriage Parkway. The tower would be located on the south end of the east row of buildings. This façade has one opening, a door, and 18 parking spaces.

The applicant has submitted a site plan, which shows two 12 by 20-foot buildings, each of which could be used by two separate carriers, and another 8 foot by 12 foot pad site for a third potential carrier. The 120-foot "monopole type" tower would be located in the middle of the site. The applicant's agent has stated there will be an eight-foot tall chain link fence constructed, which would enclose the area between the buildings. The communication tower will be constructed over eight existing parking spaces. Based on the original construction plans there will be sufficient parking still provided on Parcel 3 (26 extra spaces), even with the loss of these eight spaces. Since parking standards are not specifically listed for communication towers, the Superintendent of Central Inspection will need to interpret which parking standard shall apply.

The Unified Zoning Code permits communication towers in the AGC® General Commercial and more intensive districts ~~Ab~~-by-right.® However, the Zoning Code requires the applicant to provide the following information:

- (1) There is no available space on existing or approved towers or other structures which can be utilized to meet the applicant's communication needs;
- There is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site;
- (2) The owner of the tower shall agree in writing at the time of the issuance of a building permit the following;

- (a) That the tower is designed to accommodate at least three communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and
- (b) The owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.

The applicant supplied technical information intended to justify the tower request to staff just one week before the staff report had to be completed. Staff asked the applicant to defer this request in order to fully evaluate the application. The applicant refused to defer the case. This information has been submitted to an engineering consultant retained by the Planning Department, and it is unclear at this time whether an evaluation can be concluded by the Planning Commission meeting.

Parcel 3 of this CUP is currently limited to general office and retail uses. The maximum gross floor area permitted on Parcel 3 is 78,800 square feet for commercial uses. If this amendment is approved, an administrative adjustment will be required to increase the permitted maximum gross floor area for commercial development from 78,800 square feet to 79,376 square feet.

The applicant also will be required to file a variance request with the Board of Zoning Appeals, to reduce the height compatibility requirement for this 120 foot tower. The applicant is to provide a setback distance of 305 feet from the adjacent ASF-6 zoning district located to the east. They are providing 120 feet.

There is commercial and office developments located to the south, north and west on property zoned "LC." East of the application area is a drainage dedication, Ash Briar Residential Development and the Plaza Office Park. The nearest residential property in Ashbriar is 350 feet from the proposed tower.

CASE HISTORY: The Central Avenue Plaza C.U.P. (DP-126) was originally approved in 1983.

ADJACENT ZONING AND LAND USE:

NORTH:	"LC"	Retail shopping center
SOUTH:	"LC"	Office Building
EAST:	"SF-6" and "GO"	Condominiums and Plaza Office Park
WEST:	"LC"	Retail shopping center

PUBLIC SERVICES: This site has access to Carriage Parkway, a two lane local street with no available traffic volumes. Municipal sewer and water are available to serve this site.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide identifies this area as appropriate for commercial development. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

The Transportation utilities locational guidelines in the Plan also recommend that utility facilities with significant noise, odor, and other nuisance elements should be located away from residential areas. Adopted policy in the treatment of communication towers is also established in the Zoning Code, regarding the need to document that no existing or approved towers or structures can meet the communication need, or an existing or approved tower or structure can be used, modified, or rebuilt before a new tower is permitted.

RECOMMENDATION: Staff feels that this is a more suitable site for a communication tower than the recently proposed site at Central and Pershing. The tower would be more removed from residential uses, partially screened from view by vegetation and buildings, lower in height and less obtrusive in design. However, the required documentation was received only one week prior to the staff report having to be mailed out, and has been submitted to a private consultant for review. Staff is currently waiting on their interpretation of the data. However, it does not appear that the report adequately explains why one or more locations for antennas on existing buildings or structures in and around the vicinity cannot be utilized to improve the service problems. These would include: Hillcrest Tower, Rutan Building, Central/Hillside medical building, Robinson School microwave tower, VA hospital, residential tower at 13th and Woodlawn, and two church steeples near Douglas and Oliver. Therefore, staff is requesting that the request be DEFERRED for two weeks to the June 10th MAPC hearing.

However, if the Planning Commission believes this is an appropriate location for a communication tower and feels the request should be approved, then staff recommends that the Commission make appropriate findings and:

RECOMMENDATION: Planning staff recommends the following:

- A. APPROVE the rezoning from "LC" Limited Commercial to "GC" General Commercial.
- B. APPROVE the amendment to the Central Plaza C.U.P. to allow a communication tower on Parcel 3, subject to the following conditions:
 - 1. The site shall be developed in general conformance with the approved site plan, with an eight-foot tall wood fence constructed around the perimeter of the site. The 68 foot by 25 foot area shall only be used for a communication tower and related equipment.

2. All requirements of Section III.D.6.g of the Unified Zoning Code shall be met.
3. The applicant shall file an administrative adjustment to increase the permitted commercial square footage permitted on Parcel 3 to 79,376.
4. The applicant shall file a variance request to reduce the compatibility height requirement from 305 to 120 feet for a 120 foot tall communication tower.
5. The tower shall be a monopole type tower and not exceed 120 feet in height.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There are commercial and office developments located to the north, south and west on property zoned "LC" Limited Commercial. A 100 foot wide drainage ditch is located just to the east of the application area. Plaza Office Park is located east of the drainage ditch. The closest residential properties are approximately 350 feet northeast of the application area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "LC" and used for parking which could continue.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is surrounded by commercial development and a 100 foot wide drainage easement. The communication tower will not significantly increase trash, noise, or traffic in the area and therefore should not detrimentally affect nearby properties. The residential property to the northeast will be 350 feet from the tower and will be partially screened by a commercial building and vegetation along the drainage ditch and therefore should not be significantly impacted. The applicant notified the homeowners association, which covers the residences closest to the property, and it is understood by planning staff that they do not object to this use. Commercial buildings to the south of the tower should also screen the tower from travelers along Central.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this area as appropriate for commercial uses. The Transportation/Utilities locational guidelines of the Comprehensive Plan also recommend that utility facilities with significant noise, odor and other nuisance elements, should be located away from residential areas. This request does conform to this policy, in that the tower will be 350 feet away from residential property and the property will be partially screened.
5. Impact of the proposed development on community facilities: None identified.

GOOCH "Staff received a letter, which you also received today, from the Ashbriar President, Sam Woodburn, stating that they have no objections to this request. Are there any questions? Staff is recommending approval of the request, subject to the revised conditions that are being handed out to you at this time, and the findings found on those two pages."

GAROFALO "On the revised recommendations, these conditions aren't any different than what was in the old one, are they?"

GOOCH "That is correct."

JOHNSON "Are there any other questions of staff?"

FULP "Are you aware of any federal or state regulations that relate to falling clearance?"

KROUT "That came up, and I don't know which Commissioner asked that question, but I did contact a Federal Communications Commission (FCC) official by E-mail and they said no, they do not have regulations that control the setback clearance zones for towers that may fall."

JOHNSON "Are there any other questions of staff?"

OSBORNE-HOWES "Just a real quick one. I noticed in the consultant's report that he said to his/her knowledge there is no such company as Cellular One. I will ask the applicant about that, too, but if that is the case and they are listed as an applicant, does that make a difference?"

GOOCH "Well, I think the consultant said to the best of his knowledge, it was Air Touch or something like that. I will let the applicant explain that."

KROUT "It must be a popular name and a trade name."

OSBORNE-HOWES "But doesn't it have to be officially the name of the company on this application form. It says Cellular One. That was my only question."

GOOCH "That is the way they submitted the application."

OSBORNE-HOWES "Okay."

MCKAY "This survey that is mentioned in the letter from Weigand, I have had four people who live in this condominium project to call me, and they are against it."

GOOCH "I think I will let the applicant's agent explain the process in dealing with that neighborhood association. We were not really involved in that process. We attempted to be."

PLATT "Point out on the map again where the tower is... on the aerial."

GOOCH "On the pink area, right there."

KROUT "And show us where Ashbriar is, too."

GOOCH "It is right in here."

PLATT "Point out the tower. Okay."

KROUT "And for reference, we are at Central."

GOOCH "Central is right there. That is Edgemoor."

WARREN "John, where would the people be that you are talking about?"

MCKAY "He lives in the last group in that last cul-de-sac. Right in there. I think in the corner unit. I think there are four or five units in that little square, and that is probably who all contacted me."

WARREN "How many feet would you guess?"

MCKAY "They said 300 feet away."

GOOCH "It's 350."

WARREN "And those people would be considerably further than that?"

MCKAY "I don't know, what is the closest residential?"

GOOCH "I would say a little bit more than 350 feet. I think 350 feet would be at approximately this point (indicating)."

MCKAY "And the tower is only going to be 120 feet?"

GOOCH "Yes."

OSBORNE-HOWES "I just want to get clarification. The only part of this property that is in the application for rezoning is the 1700 square feet? The rest of it will stay Limited Commercial?"

GOOCH "Correct."

WHEELER "Just for my reference, I am assuming by the layout and the dot that that will sit on the south side of the building that is currently occupied by California Closet?"

GOOCH "Pennypower is the best way I can tell you."

GAROFALO "I just want to make one comment. It kind of concerned me a little bit that on the second page of the report, at the top, it says that the consultant did not perform a field survey of the proposed site or search area. Aren't they required to?"

KROUT "Well, they are in Florida, and we have limited funds to be able to fly them up so that they can do on-the-site reconnaissance. A little later on, I will tell you about a larger study that we are talking about doing to be able to be a little more proactive. That will require some field survey, but for the purpose of doing this review, we supplied them with the information, and the applicant supplied them with enough information to be able to evaluate the site."

HAGGAR "Was there any CPO action on this item?"

GOOCH "The CPO will not hear the case until June 14, due to the fact that the June CPO and Planning meetings are a little off."

HENTZEN "Mr. Chair, I am not sure that this is the right time to speak to this, but let me comment, as others have. There are two tower applications on the agenda today. I am going to propose that both of them be deferred for 30 days. Let me tell you why. We are finding out the technology of this communication business by bits and pieces. We hear a little bit from the applicants, a little bit from the neighbors, a little bit from the staff, and we are just piece-mealing. What I would like to see, and I think Marvin is going to speak to that later, is that I would like to see a genuine understanding of this whole mini-communication system that we can use as a guideline to decide these cases and not decide them every time we meet on just part of the information."

Example. I think that our codes in Wichita prescribe that when a tower is built, it has to be available to maybe three users. I think we all need to understand that because if you put a 120 foot tower up, and the applicant puts his signal caller up there on the top, then the others have to go lower than that and to get down to where the others don't do much good with that tower. If that is the kind of requirement we are operating under, maybe we need to think about that, and understand it. So all I am saying to you is that I vote today, and my proposal will be to let us see if we can't zero in the next 60 days, and I am inviting the staff, I am inviting the people that are applying to get hold of me and teach me. I am willing to listen. Thank you, Mr. Chair."

JOHNSON "Are there any other questions of staff? Applicant or agent, please."

RUSS EWY "I am with the Baughman Company, agent for the applicants, Air Touch Cellular of Kansas, AKA Cellular One. I would like to start by walking through a little bit of the history of how one goes about finding these tower sites. They don't necessarily happen overnight as one would expect, and as they are presented to you.

Cellular One has been looking at supplying service to this area, or improved service to this area, I should say, for the last two years. Intensively searching for property involving the Baughman Company for the last year. We were actually prepared to file this very application last October, when it was determined that the Robinson Junior High School site was available for a tower proposal. Cellular One, at that time, offered to withhold applying for this zone change and CUP amendment that we have before you today in order to see if that site would actually be approved for a tower. As we know, that didn't happen, so at that juncture, this spring Cellular One felt that it was important to progress and to search for this tower. We felt that we had, arguably, the best site in what I am going to call the larger College Hill/Crown Heights area of Wichita; obviously, the largest concentration of commercial uses and commercial zoning, and felt that our application was a valid one. We filed and through the course of that filing, we have supplied staff with our justification per usual, as was done in every other cell tower case when I was on staff, I would review, or that staff has reviewed since my departure.

At that time, there was somewhat of a policy change, and we ran up with a new situation by where Marvin hired a third-party consultant out of Florida to review these applications, and we complied with that. We provided contact with this company and Cellular One's engineers have worked over the last several weeks with these consultants to put together information that they needed to put together the report that you have before you. I noticed in the staff report that it says that the applicants refuse to defer the case. We actually did go to CPO 2 late last month and offered to defer the case in order to iron out these details.

We are in agreement with staff comments. I think we are also in agreement with their recommendation. One of the items in the consultant's report that was mentioned was Robinson Junior High. I believe staff commented appropriately on the reasons why that is not a site that is going to have any potential. The other site they mentioned was the National Armory building, which is located here (indicating). Obviously, in the last year, we did not overlook that site as a potential site for a tower location, but after research, and after looking at that site, we felt that it had several disadvantages that our site over here would avoid. That is that obviously that property is closer to residential properties, closer to homes, and it is also closer to a major arterial intersection. The site of a monopole of 120 feet, relatively close to that intersection is going to have a little bit more of a visual impact, we feel, than setting it further off of Central, and off of Edgemoor, obviously. So we felt that that was one advantage.

The second advantage is the armory site is unzoned. It is 'SF-6'. It is also unplatted. So you have some other issues there that I would argue does not make that site any more an advantageous site. Granted, the US Army is there, but other than that, we felt that going any further into this commercial shopping center had some definite advantages. I would like to point out that Bill Ames of Cellular One is here to answer any questions that you may have from the industry standpoint. I noticed that there were a few questions about who the tenant is that is adjoining that wall, the California Closet, and we have Tony Utter here, the property manager of that shopping center to answer any questions that you may have of that. Again, we are separated as well as we could, and we tried to buffer this site as well as we could from these, not only the Ashbriar Estates, but the residential neighborhood further to the north.

We originally looked at the vacant Parcel 2, which sets up on a hill as a potential location, and we felt that that provided these folks a greater view of the tower itself in its entirety, as a matter of fact. With that, I would answer any questions, and if not, we do have other people here in attendance that may be able to answer your questions."

KROUT "Maybe somebody other than yourself could best answer this question, but Commissioner Hentzen mentioned the fact that this is a 120 foot tower, and that no one would locate below 120 feet, so are we really providing a real co-location requirement? Could someone on your team respond to that?"

EWY "I will let Mr. Ames do that."

BILL AMES "I am the Property Specialist with Cellular One. I live in Emporia, Kansas. To answer your question, at 120 feet we felt that we had room where at least one carrier could get very coverage and a second could get minimal coverage. The main idea is to get above the trees, and at 100 feet, which we can have 10 foot separations in that, so say if we go at 120 feet, another carrier at 110 feet, the third one at 100 feet. We would still have a distance above most of the trees and buildings and have limited coverage at the 100, but still adequate, maybe, for some systems."

KROUT "I understand that you are also constructing this tower so that it has the capacity to add another 20 feet?"

AMES "Yes, that is true. We will build it with a flange on top, so that if somebody comes along that feel that they can't do anything at the height we are, they could add a section to the top. We will put a foundation under it to compensate for that and they will have to come back to you folks to get the approval to add onto it."

KROUT "Our Code requires that the tower owner or land owner permit reasonable modifications to structures to permit additional accommodation for users after the initial approval. So I think you would have that flexibility. They would have to go through an approval process to have the twenty feet."

AMES "We had a situation like that at 21st and Oliver, I believe. Sprint had a tower and we got approval to add 10 or 15, maybe 20 feet to it so we could accommodate our antenna at the time."

OSBORNE-HOWES "I just have a question for Russ. So are you going on record then, saying that visibility from an arterial is a disadvantage when you are looking at locations?"

EWY "I am saying that that, in this particular situation, was one of the criteria trying to gauge the weight of my personal opinion here, and I know where that stands, I would make the argument that the site line, and you really have to be familiar, as I am sure you are, with this area. In looking down that, you have a two story office building, and a relatively large cottonwood tree that is going to be in the foreground as you are driving down Central. And I would say, what is the disadvantage of cell tower aesthetics, the visual impact on the skyline of a community, and you try to take steps to minimize that."

We are always concerned with the neighborhoods around these cell towers and how it impacts the views from their homes, but I think also a secondary consideration should be is what the impact is from the travelling public going down Edgemoor and/or Central. I live immediately in this area to the southwest, and I know setting there at Edgemoor and Central, you are going to see a tower loom over McDonalds at that distance more so than you are going to see it tucked in back in towards the center of a commercial area with a relatively large medical building and various other multi-story office buildings."

HENTZEN "I was up there the other day, and where, exactly, are you putting it in relation to that asphalt paving up high and the buildings that are now there? Are you putting it close to the buildings, down low, or are you putting it up high, where that asphalt is?"

EWY "It would be up high. It would be approximately, and this is an approximation, six to eight feet from that building, wherever we can get our footings away from the structure's footings."

HENTZEN "Well, those buildings are down low, they are not up high on that asphalt. The existing buildings, I mean."

EWY (Indicating) "The structure will be here, approximately in this location. And I am saying that there is a 30 inch stormwater drain that runs right along here that catches run-off from Parcel 3, which this is the southern portion of. There would be no water trespass onto adjacent property if that was a concern. The grade, although relatively steep, the site doesn't preclude construction, if that was the intent of your question."

HENTZEN "But it is going to be quite close to the existing buildings?"

EWY "Right. Exactly. And that exact distance, I am sorry, we would really have to wait until we get further along in the construction process to separate the footings, which is basically going to be the reason for separation, whatever that may be."

GAROFALO "If this tower is put up, would it help resolve the problem that we had before us a couple of weeks ago on the North Pershing request?"

EWY "Well, on the North Pershing side, I guess that is a little bit of a tough question to answer as far as we are a carrier and it is going to take care of our needs, obviously. There are other carriers, and maybe I should turn it over to Bill at this time. This may help some of their coverage areas. Will it have the ability to take care of and remedy certain aspects of the problems that the Pershing site apparently was attempting to alleviate? I really don't know enough about that request, especially from the technical side to answer that question. I will let Bill step in. He may know more about it than I."

AMES "On the Pershing request, that was an independent person that wanted to put up a tower, then hoping that we would come to it. On this situation, we are taking care of primarily our needs for building it for other carriers. I have been in contact with Sprint, Southwestern Bell, and Voice Stream to see if they would be interested. Of course, they haven't done anything yet, but I think that as soon as we have the tower, at least one of them will come on almost immediately. To speak to the Pershing thing, I don't know what to say other than it would have been close to what we wanted, but not exactly."

GAROFALO "I guess my question is that whoever it is that is on that tower, whichever service it is, for example, your service, is it going to take care of your customers in that area that the Pershing thing would have?"

AMES "This tower will better take care of our customers. One of the things that we had to furnish to the consultants was a drive of the area. We have a van that has multiple antennas on it and they registered the amount of signal strength as they drive the area on various streets. That is how we proved to them that we needed a tower in this place. If we would have gone to Pershing, we may have needed a repeater or something to the northeast, and we would have probably needed two facilities to do the same thing because it was further west. The Pershing site was further west."

GAROFALO "So you are telling me that your customers were driving through by the Pershing area, say one of them was driving through the Pershing area, they will be covered, then, with this tower?"

AMES "With this tower, yes."

WARREN "I find it interesting the comments you made about building this in such a manner that you can add 10 foot to it. I guess I am wondering, if it comes down the line and we are going to need another one of these, how about adding 20 foot? Do you have to make a lot of modification going up another 20 feet?"

AMES "Okay. We could have built a 150 foot tower, but it is designed at 120 feet so that we can add on."

WARREN "So you could add as much as 30 feet to this tower?"

AMES "Yes, we could. The other thing that we have to always do is make sure that our foundation is heavy enough. We go from 25 to 40 feet deep with our foundation in this area because of the sand to balance whatever tower is above it."

WARREN "What I am hearing then is that the specifications that you have now would provide for maybe another 30 foot?"

AMES "That is correct."

JOHNSON "Are there any other questions of the applicant?"

FULP "One of the requirements of this application is that the applicant must provide the Planning Department, and therefore the public with reasons why existing facilities cannot be utilized. When we received our original information, that part of the report, had not been received by staff. Have you filed a report indicating why you could not utilize the Hillcrest Tower, the Rutan Building, Central Hillside Medical, the Robinson School microwave, Via Christi Hospital, etc.?"

EWY "I believe that that was submitted and shipped to Florida quite some time ago."

KROUT "That is in the nature of technical information that was shared between the applicants and our consultant. You can have all of the details of their technical investigation, but they have the locations and the heights of all of those existing structures. They had conversations with the applicants and had your other maps that showed what your coverage needs were, and they determined that in terms of Cellular One, maybe not the other carriers, but in terms of Cellular One, that none of those locations would have solved the communication needs that Cellular One has. That is their conclusion. That report is their conclusion and what they say is that the only other options are to build a new tower at the Armory, which was already described for you, which is different than an existing structure. There is an existing tower at Robinson School, which they indicated would need to be rebuilt, but our word from the USD is that that site is not available. So not available means that it is not available and we can't consider rebuilding a tower at that site."

FULP "Have we received the engineering consultant's report?"

KROUT "Well, this is their report to us, which is a summary report. If they sent us more technical information, I don't think it would help you or I with this case. So we are relying on their expertise and their engineering judgement."

OSBORNE-HOWES "This discussion is causing me to ask another question. But I do have a question of staff first, as part of this. Under your new recommendations, you say that they shall provide a variance request to reduce the compatibility height requirement of 305 feet to 120 feet. Do you mean set-back?"

KROUT "It is actually a set-back. It is a compatibility set-back requirement. It does allow them to go higher, but technically it should be referred to as a compatibility set-back."

OSBORNE-HOWES "But it is a height?"

KROUT "What we have is a standard that says in order to build over 35 feet in height, you have to be set back three feet for every foot in height over 35 feet, beyond 50 feet from the property line."

OSBORNE-HOWES "So they are saying a 120 foot tall communication tower is going to be set back how far from residential zoning?"

KROUT "Show the zoning map. It is going to be 120 feet from the nearest zoning, but 350 feet from the nearest residential use."

EWY "This was similar, and I don't believe that Southwestern Bell ever came to this body, so they are not aware of a similar variance request. As you can see, there is a drainage dedication that runs here. There is an unplatted finger of property right here. That is a zoning lot that is zoned 'SF-6', although it is obviously not ripe for residential development. We are arguing that we can meet the compatibility set-back standard when you actually get to a residence."

OSBORNE-HOWES "It is 120 feet away, is that right?"

EWY "Right. But from a residence, we are actually somewhere in the neighborhood of 372, 373 feet."

OSBORNE-HOWES "Could they put a residence in there?"

EWY "No. That was originally platted for St. George Orthodox Church, maybe 15 years ago."

OSBORNE-HOWES "The reason for my concern is that if you are saying that we are really going to maybe end up having 140 or a 150 foot tower, does it need to be set back further?"

EWY "Right. You are looking at, right in this area, obviously it tapers to the northwest, but you are looking at something from a distance of 40 feet to 70 feet, all along here, which, I don't know what could happen on this property."

JOHNSON "Are there any other questions of the applicant? Thank you, Russ. Is there anyone else here to speak in favor of this item? Is there anyone here to speak in opposition?"

DAVE YEAROUT "I am with Yearout Associates. If I can, I need to go to the aerial. I am not so much in opposition as it is a request for a deferral. I am here representing a local realtor, Brad Seville, who has an FM Radio station client who is presently working on acquisition of this building, which currently has wedding expressions, and if they are successful, they will be submitting, and I have given a letter to that effect to the staff, the property itself comes up to roughly this location, and it is our interpretation right now, based on the Zoning Code, although there is some dispute, about that. That relay tower for a broadcast studio, which is what they want to build, can be built in the 'LC' district, which this property is zoned. Based on the distance to the closest single-family zoning, it could be 136 feet in height.

They are actually wanting to get up to 190 feet in order to put their relay dish to send their microwave signal to their transmitting tower, which is located in Butler County, so if that real estate contract goes through, we will be approaching the City, seeking a variance approval for a 190 foot structure just immediately south. That is an issue that is currently underway, and the City has been advised of that. There is some dispute, we have correspondence back from Marvin, who is indicating that it is initially the City's position that that is, in fact, a communication tower. We have not resolved that issue, but for the sake of discussion, if he is correct, the engineers for the radio station indicate that this tower was too far away. They have a co-axial cable line that goes to their relay tower, and the quality of their signal degrades rapidly from their studio the further away the tower and the dish is. So, from the Wedding expressions building to a location here; 1). that tower at 120 feet, or even at 150 feet would not be tall enough. 2). It is too far away from their studios. So we will be discussing with the City very soon, within at least the next 30 days about a structure at that location.

Stepping aside for a moment, just for I guess a question, if the idea of this particular structure is that it is being designed and capable of having additional units put on top and making it 150 feet, why is that not what the application is for? Why is the neighborhood not advised that it has the potential for 150 feet rather than come in lower and think that they will get it in and then later on come in and say that since it is already there, they will just go up a little more. It seems a little bit unfair, and a little bit of a game playing going on that I find a little difficult to understand why that is not being taken into account.

I did want to make sure that you were aware of the radio relay tower and if it ends up being the interpretation of the City that they redefined that as a communication tower, then that issue will be discussed immediately south of this location, as well. I will be happy to answer any other questions that you may have. As I said, we are recommending and requesting that you defer the item until this has been able to at least be laid in front of you, and you ought to be able to evaluate both equally then, as far as what would be appropriate."

MCKAY "The distance from the back of your customer to Central Street is how far?"

YEAROUT "The lot itself is about 290 feet deep, I believe, and we are right at the back of the lot. Yeah, it is 290. So we would be right off the north right-of-way line approximately 260 or 270 feet. To the center line of Central is another 50 feet."

OSBORNE-HOWES "So what are you hoping for, other than deferral, that this tower goes up to 190 feet?"

YEAROUT "That is the radio station's desire, yes. And the purchase will be contingent upon that. And as I indicated in the letter to Marvin, while we have identified the fact that the City's Code does talk about any new structure having multi-use capabilities, they are not, because they are in the process both of acquiring another radio group in Texas, and desiring to secure here, they have really not said they wanted to sit down and talk about what else would be used on the tower today, but they understand the code requirement, and said they are open to discussions on that. But that is in the process now, and there is some earnest money and some offers on the table to buy time to be able to try to put the real estate deal together."

MCKAY "Has your client talked with the applicant about this, or is this just kind of your idea and you hope they go along?"

YEAROUT "I don't think they have gotten to the point where the buyers have said they were willing to sit down and talk with anybody yet. They are wanting to buy time to secure the property. This just came up the latter part of last week."

HENTZEN "I just want to point out an example of what I am saying. I believe, a couple of weeks ago, when we considered that tower on Pershing, we had the technical people telling us we ought to build it 180 feet high to serve the purpose of this area. Now we have somebody telling us to build it 120 foot high, and then they will have to raise it before they get it done. That is what I am talking about, piece meal information that we just cannot assimilate. And that is the reason I asked to give it a little more study before we vote on these things."

HAGGAR "How about a little bit of clarification. It looks like Marvin has two ex-employees going at it, huh? But let me ask, you know when you use the word City, do you really mean this department, or do we really have a City code that defines what you are talking about? How do you define 'City'?"

YEAROUT "Well, I submitted the letter to Marvin."

HAGGAR "So it is with you and Marvin then?"

YEAROUT "And I got a comment back from Marvin, indicating in his E-mail that he had had some conversation with Kurt Schroeder and with Joe Lang about this, but that has only been in the last couple of days."

HAGGAR "But they aren't the City. To me, and I am trying to figure this out, is that a policy decision, Marvin, or is it just staff wrangling back and forth?"

KROUT "It is just a question of interpreting the Zoning Code, and that is an administrative decision. An administrative decision can be appealed to the Board of Zoning Appeals, but that was an administrative decision."

HAGGAR "I am just trying to see if we have a City Code."

WARREN "Am I understanding you right that if this request we have, which I would assume is a reasonable and well thought out, well engineered request, if that is granted that it is going to kill your deal? Is that what I am hearing?"

YEAROUT "No. All I am saying is that the radio station engineers are telling us that a tower at this location to serve them in this building will not work for them. They will still be in here talking about a request for themselves for a tower for themselves."

WARREN "How high can this tower go? This one that is requested today; can it go 190 foot?"

YEAROUT "Probably."

JOHNSON "Are there any other questions? Thank you. Is there anyone else to speak in opposition? Seeing none, the applicant/agent has two minutes for rebuttal."

EWY "That is somewhat surreal. As was mentioned, no. You are hearing this tower and 190 foot radio station as Cellular One is. Mr. Yearout explained that we would put his client's land deal in jeopardy by building several hundred feet to the north. We have expended, as I mentioned in my original presentation, a substantial amount of time and effort, and I believe reasonable patience in trying to come up with a reasonable request, to try to come with something that is going to meet our needs, meet other client's needs, and have the ability to come in at a future date and meet even additional carrier's needs. In our efforts to try to come to you with a reasonable request, one that is obviously not generating area property owner interest, and we had a 22 page ownership list, 450 some names. We were required to prove why we couldn't go anyplace else. I would ask that if Mr. Yearout's concerns are to be taken seriously, that we would ask that they prove why their radio station couldn't come 100 feet to the north. We have proven why we need to be where we are, and I think in order to hamper our application, that I would have to say that we would at least appreciate the same sort of evidence be presented as to why they need this potential 190 foot tower where they need it. And with that, we will answer any questions."

HAGGAR "We have a letter from Weigand to you. What is the relation of Weigand to you?"

EWY "Sam Woodburn is the President of the Ashbriar Estates Condominium Association. He works for J.P. Weigand."

HAGGAR "So this is just the average person's comments?"

EWY "There is a gentleman by the name of Norman Knock, who is the outgoing president of that condominium association, and Sam Woodburn is the newly elected president of that homeowners' association as of March of this year. That is what he is asking for. There is also a lady by the name of Kathy Polly who works for Weigand-Omega Property Management group, who manages the property."

HAGGAR "Let me ask this so that we understand, this is a public input to us through you, or is this a businessman's action? What is it?"

EWY "None of this property is going through Weigand, if that is your question."

HAGGAR "Why would he write the letter to you instead of to us?"

EWY "We contacted Mr. Woodburn. We attempted, while working with Marvin, to contact who we felt the most seriously impacted neighborhood group be, and that would be Ashbriar Estates, so as to try to get a feeling as to their availability for an informational meeting with staff, or with whomever, we contacted their president, who happens to be Sam Woodburn."

HAGGAR "Okay."

OSBORNE-HOWES "I still have questions. My concern is that Mr. Hentzen had said that we have so few locations where we can all sit in here and agree on that is a location that would work for this part of town. We recognize that this part of town has some problems with good connections or getting good service as it is, so it looks like we even have staff agreeing that this is a good location. So, it sounds like this is a perfect location. Now what I hear is that this may work okay for one cellular company owner's purposes, but it won't be good enough for all, so we are going to have to, in the near future, be looking at other sites to be able to service some of these others. That is tremendously good offensive strategy, because what you do is find the best location and basically block out some of the others."

But what I am looking at here is that we are going to have to go through all of this again for some of the other carriers, how many towers, how many radio stations, or whatever, that we have going for us. So I am getting a little concerned that if this is such a good location, and we could, in fact, go higher, than maybe that is what we ought to be talking about, or at least get more information and have a good plan for this area of town, which obviously, we don't have. That is where I am at right now. I am really struggling, and I would like to hear what comment you have."

EWY "I would answer that initially by stating that historically, these towers have been looked at as the shorter they are, the better they are. Then we have come up with the Zoning Code that required the co-location element, which means that you have to be reasonable. Could Cellular One go at 100 feet? Sure. Could we go at 150 feet? Sure. But you want to apply for something that is reasonable. You are not putting a giant pole in an inappropriate location. You are trying to understand your needs. Obviously, Cell One makes it their business to be aware of what their demand is, which changes. It constantly evolves. And they are also trying to see what it would take in order to make corrections in their signal strength.

What they also do, it is kind of a rare industry that gets together with their competitors to find out what they need because tower locations are at a premium. We know of several of our carriers who have holes in this area who are locating on various structures. Their hole may not be where ours is. As a matter of fact, most likely, they are not. They are putting up, Southwest Bell for example, on Wesley Medical Center. That is great. Wesley is several miles to the west. They may still have coverage needs around the Central and Woodlawn area. An 80, 90 or 100 foot mount would work perfect for them as a secondary antenna without building any other additional towers. We believe that where this is located, triangulated amongst other tower locations south of Kellogg, closer to Rock Road, as well as tower locations along 21st Street, that we are going to have a pole that is going to provide adequate coverage. Other carriers, we believe strongly, will make this site work. We are talking cellular communication companies."

OSBORNE-HOWES "Well, I am still struggling because what I really hear is that you provided it adequately, and out of the goodness of your heart talked to your competitors, but in fact we have required that.

I guess what I feel like right now is that we have been witness to some childish banter back and forth among people who both want this perfect location, or at least access to it."

EWY "I might add that the cooperation in the industry is not necessarily predicated on the fact that it is a zoning requirement for Wichita, Kansas, it is predicated on the fact that you spend 'X' number of dollars going on existing million dollar monopole. Trust me, we would have lost a chance to present a cell tower case in front of you today. Cell One, and Bill will say that they really wanted Robinson to work. They would have gone there."

CONSOLVER "To follow up on that, this is the same thing that I got into over the Central and Oliver situation, and that is that I was under the understanding that from the industry and from our ordinance was that we required the minimum of three. And from the industry, the idea was that it had to be approximately 180 feet in order to put three on it for proper spacing, or something to that effect. That is what I understood.

Now another entry has come in to it, and I think it is essentially what Susan is alluding to, and that is the fact that we now have eight or nine companies. So consequently, there is no way we are going to get around the fact that in order to serve that many companies, we are either going to have one of two things. We are going to have to go to a 200 or 300 foot tower, or we are going to have to have more towers. So what I am hearing here is that no matter how you cut it, if we just assign one tower in each area without the full prospect, we are going to end up with a real serious problem amongst the service. We are going to limit who is going to be where."

EWY "I would answer your question several ways. I think, as Marvin and the staff heard in our radio frequency engineer's discussion with them a few weeks ago, 200 feet is really a cap. For a cellular communication antenna, you really don't go much higher to provide adequate service. You have to be in a certain range, you know, 60 to say, 200 feet, I don't know. I am not a radio frequency engineer. I am not sure which radio frequency engineer addressed this board on the need of the perfect 180 foot communication tower either. When you say expert, I am not sure who that person was. We've got a couple of the best ones. Obviously, the 180 feet, I believe, was applied for by a gentleman who is in the business of leasing space."

CONSOLVER "I don't want to get into that part of it, because basically listening back to what I heard when we heard the ordinances and all of that, and I guess, Russ, my question is, then, and I apologize because I wasn't here at the beginning, but with regard to if this is approved, does that completely, because of interference or for any other reasons, does that preclude anybody else being there? How close can someone else put a tower up there in that same area if this is the ideal spot?"

AMES "Again, I am with Cellular One. I am not a radio engineer, I am a real estate person, but I have been around enough, I think, to where I can answer your question. That is within 50 feet."

CONSOLVER "So we can have, essentially, two towers?"

AMES "You could have a tower farm, if you wanted to. Providing it is not an AM tower. As long as it is an FM tower."

CONSOLVER "I am talking about cellular towers."

AMES "Cellular or FM."

CONSOLVER "Okay."

FULP "You started to give us some factual information earlier and you were cut off. The footers and foundation that you have planned for this tower, the current height request of 120 feet will accommodate a maximum height of what?"

AMES "I would have to look at the report, it is whatever it says. But if you want it 500 feet, we can pour enough concrete to hold it. What we planned for, as an addition, was 150 feet, but we can build it any way you want it."

FULP "Did you see that movie with Paul Newman, the Infamous One? What we have here is a failure to communicate on a simple question. You have plans which you have presented to build this tower. Those plans will accommodate the maximum of what?"

AMES "One hundred fifty feet."

FULP "Thank you."

WARREN "Would it be a major change in your plans and specifications take those footings on down to where they would accommodate 190 feet?"

AMES "Before they are poured, we can make them any size you want."

WARREN "It seems to me that if we are going to grant a spot for a tower, that we ought to provide that that tower could potentially go to 200 feet, so I would encourage the board to take a look at that."

KROUT "I think you could make that a condition of your approval and if you want to make it a motion. The Code does require, by the way, that the site be allowed to be rebuilt for a taller tower, but it would obviously be easier to build a foundation."

WHEELER "I guess I don't fully understand the conflict of interest with the second tower. The second tower is a radio communication tower thing, and if they want it there, it is because they are looking at putting a studio in that neighborhood, not necessarily that they have to have that location to communicate from, which is a totally different subject from cellular."

KROUT "I am sure glad you mentioned that, because as we have told Dave Yearout, we believe that is a zoning issue, in the first place, to create a site for another communications tower, in addition to requiring a variance. Also, they have said that they can't commit to co-location, which is another issue that they have to deal with. But most the most important thing is that this relay tower is a very issue than the cellular towers, which have this problem of having to have numerous towers and antennas to meet their needs in various parts of the community. This relay tower could be located anywhere in the city."

I have few more words about the dynamics of this whole process, and what we are trying to do to deal with it, but I think that you don't have to worry all that much about this relay tower. That is a separate issue that should be dealt with separately. There is much more flexibility on where to locate broadcast studios and relay towers than cellular towers."

WHEELER "The second part of that is knowing that they may apply to do that. I don't understand why they are putting the two towers there. We will just have to look at that when the second one actually comes to us. But, given a forewarning that that could be a possibility, I don't understand why we would try to require this person to make his even taller, knowing that there might be a second application that could accommodate umpteen more."

KROUT "It will be easier to, if we can get away with, visually, one tower versus two. That is preferable, and that what the Code basically says for towers, so if we could rebuild a tower or add to a tower, that would make it easier for one site to be utilized instead of having two towers."

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There are commercial and office developments located to the north, south and west on property zoned "LC" Limited Commercial. A 100 foot wide drainage ditch is located just to the east of the application area. Plaza Office Park is located east of the drainage ditch. The closest residential properties are approximately 350 feet northeast of the application area. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "LC" and used for parking which could continue. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is surrounded by commercial development and a 100 foot wide drainage easement. The communication tower will not significantly increase trash, noise, or traffic in the area and therefore should not detrimentally affect nearby properties. The residential property to the northeast will be 350 feet from the tower and will be partially screened by a commercial building and vegetation along the drainage ditch and therefore should not be significantly impacted. The applicant notified the homeowners association, which covers the residences closest to the property, and it is understood by planning staff that they do not object to this use. Commercial buildings to the south of the tower should also screen the tower from travelers along Central. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this area as appropriate for commercial uses. The Transportation/Utilities locational guidelines of the Comprehensive Plan also recommend that utility facilities with significant noise, odor and other nuisance elements, should be located away from residential areas. This request does conform to this

policy, in that the tower will be 350 feet away from residential property and the property will be partially screened. Impact of the proposed development on community facilities: None identified.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The site shall be developed in general conformance with the approved site plan, with an eight-foot tall wood constructed around the perimeter of the site. The 68 foot by 25 foot area shall be only used for a communication tower and related equipment .
1. All requirements of Section II.D.6.g of the Unified Zoning Code shall be met.
2. The applicant shall file an administrative adjustment to increase the permitted commercial square footage permitted on Parcel 3 to 79,376.
3. The applicant shall file a variance request to reduce the compatibility height requirement from 305 to 120 feet for a 120 foot tall communication tower.
5. The tower shall be a monopole type tower and not exceed 120 feet in height with the footings constructed in order to provide for the possible future expansion of the tower to 200 feet.

MCKAY moved, **WARREN** seconded the motion.

FULP "I, in principle, agree with the motion, however, I would like to offer a substitute motion for consideration."

MOTION: That the item be deferred for 30 days to give the applicant and the future new applicant the opportunity to work out a possible joint-venture so that we wind up with one tower.

FULP "Again, the reason I am offering this substitute motion is that in my opinion, given what we have gone through before, is that we are not going to have two towers in proximity of that location in our lifetime, not in this City. The public perception and the outcry will come forth. It doesn't matter whether it is radio or it is telecommunications, in my opinion. I think the argument that we heard from the gentleman relative to the FM radio station is a little invalid because of co-ax cable. He is correct in my opinion, and signal degrading, the further you go over co-ax cable. But co-ax cable is no longer the thing. There is a thing called fiber optics, which is reduced degradation of the signal as it travels by 98%.

So one tower could be used at this location, for both purposes. I think the public will be willing to buy one tower of 200 foot tall, but not two towers because of just the perception of that being in their back yard. I saw no sense of immediacy here. These two people haven't even talked yet. The applicant got surprised today by a future applicant. No one likes surprises, and we saw the reaction. I think joint-venture saves them both money. Give them a chance to talk about it. It may not change and we can always approve this as recommended by staff and/or as a motion and a second to the amended motion made. We could do that in 30 days. But I think our responsibility here, in my opinion, is to give them the 30 days which will give them time to get together.

FULP moved, **HENTZEN** seconded the motion.

WARREN "I just can't imagine that a radio station, and we are looking at a land transaction negotiation, we are looking at a licensing. I don't think 30 days is going to do them any good. I don't think there are going to be enough answers in 30 days, and I don't think it is fair to hold this applicant up, who has done his work, complied with everything he was supposed to comply with, because I think in 30 days we are going to come up and say that we need another 30 days, and then another 30. I don't think they are going to put this deal together that quick."

CONSOLVER "Marvin, you said this was a zoning request, for a 120 foot tower, and if we put in the other, and say the substitute motion went through, how would that affect the delay? Or say, for instance, the first one fails, and we are talking about a 200 foot tower, do they have to reapply?"

KROUT "If the original motion is approved, for a 120 foot tower and a 200 foot foundation, that means that they will have to come in and amend the CUP again, this time hopefully not to have to ask for another variance, but just a CUP amendment to go up to any additional height. Before you vote on the substitute motion, I would suggest that you ask the applicant what a 30 day delay would do to them."

EWY "I will let Bill discuss this. We have become very accustomed to deferrals. This is obviously a new wrinkle that came out of left field. I respect and understand the rationale behind that substitute motion. My initial reaction was that we would be accommodating their height need by building this tower. Without really knowing the firmness of their proposal, we honestly had, last year, attempted to have this site operational June 1, to give you an indication of our time line and our needs. I think that there is afforded to us a reasonableness of how long these discussions can really drag on. Having said that, I will let Bill, obviously who is in the industry, get to his company's desire or willingness to defer."

CONSOLVER "Can I ask you one question, Russ, before you step down? You are saying that in your statement that the first motion would allow for the adjustment, at some time in the future, to accommodate the other one as far as height? Then you would just have to take down one tower."

EWY "What the Zoning Code requires is that if you have a tower or structure in place within a reasonable proximity to another tower location, you rebuild that tower to meet your needs at your cost. So you are replacing, and perhaps increasing the height of an existing structure. If in 30 days, 60 days, six months, one year, ten years, it is decided that an FM station can go there, then I believe that we have already made reasonable accommodations for that structure. Again, the technology and the specific engineering standards of them being able to run cable an extra couple hundred feet or not, I am not sure. But there again, may I ask Mr. Ames to step up to specifically address that? Okay, I will present Tony Utter."

TONY UTTER "I am the Vice-President of Trans-American Management Company. We manage the property at Carriage Park and have for several years now. Perhaps in responding to a concern that was expressed earlier regarding future carriers. We are, of course, not at liberty to disclose all of the business terms of the lease agreement, which, by the way, has been fully negotiated and is ready for signature, pending all of the necessary approvals. But the lease agreement actually does give Cellular One/Air Touch the financial incentive to have other carriers on their tower. I think Mr. McKay might have touched on that in his comments, and I believe that his motion is consistent with some of the things in the lease agreement that would encourage Cellular One also to have additional carriers or companies on their tower. I am real interested in the radio station's situation, too, because they are one of our tenants, currently at Carriage Park."

One of the things that I wasn't sure that I heard though, was whether, and I think it touches somewhat the second motion there, whether we have an executed purchase contract between the radio station and the owners of the Wedding Expressions building. I am also a commercial real estate broker and I know that if we don't have an executed contract, and maybe even if we do, things could go on that could distract the negotiations."

JOHNSON "Basically there was the question asked about the delay of 30 days. I would like to have the answer to that. I don't want to open this up again."

AMES "Back to your question. Would you mind asking it again, please?"

FULP "I have made a substitute motion that we defer this item for 30 days. The basic question before you is, in waiting 30 days, will you be harmed and to what degree?"

AMES "In servicing our customers, and we have been very patient, as Russ has said, because we started some time ago to work up on this. I think, really, if you can approve the first motion, there are things that we can do to accommodate that, but I would like to not have it deferred."

FULP "A follow-up question, then, in my mind, and I know that this came as a surprise to you today, but doesn't your business sense say that it might be to the advantage to the two parties to joint venture and share in the financing of the construction of this thing? Isn't it worth 30 days to take look at that business opportunity?"

AMES "As a construction person, I have been in construction for 30 some years, I would say that we can accommodate that if this deal does go through, and we could go ahead and accommodate that if the first motion was approved. And they can use microwave instead of co-ax."

JOHNSON "Thank you. Marvin, you had something?"

KROUT "Just one issue about the question of duty that we need to act in a reasonable amount of time because of the Telecommunications Act, and I guess if you have any questions, you might address them to the City Attorney on that issue."

Even though Cellular One has been looking at this for a long time, they really have only recently made an application, and even more recently have supplied us with the technical information we needed to do an evaluation. I am just saying that I don't think you should be worried that you run the risk of violating the federal law if you delay this. That is all."

JOHNSON "Let's vote on the substitute motion."

VOTE ON THE SUBSTITUTE MOTION: The motion failed with 9 votes in opposition and 2 in favor. Miles, Frye and Lopez were not present.

PLATT "I would like to make a comment on the issue before us on an aspect of it that has not really been discussed, I don't think, very much here. It seems to me that we are proceeding on the general assumption that a tower is aesthetically not pleasing. I guess I would have to question that assumption. It seems to me that towers are one of the nicest things that architects and artists have designed. Most of them are probably artistically superior to 90% of the houses and buildings that exist in Wichita."

If you were to own a condominium development in Paris, you would charge a great deal more if the folks could see the Eiffel Tower than if they couldn't. I live here in Wichita and one of the things I see out my living room window, which is floor to ceiling and about as big as three of these panels, is the tower at Southeast High School, which is 140 feet high. I think it is very attractive. Now, one of the things that seems important to me, and I have been sitting there looking at it for some time now, running through my mind, and it is probably how close you are to something like this, in terms of attractiveness. If you are very close and see nothing but the base of it and the chain link fence around it, that is not very attractive. If you are far enough away where you can really see the tower, which is a pretty nice thing, then it begins to be attractive."

It is an important issue in terms of locating them, and where the tower is in relationship to people who look at it. I voted against the one we talked about in College Hill because it was right next door to the people who had to look at it. I don't know how far you

need to be away from it to make them attractive. I am several football fields away from the one at Southeast High School, but it seems to me that we are beginning to approach the proper distance here from being away from residential places where then the tower can be something that is part of the urban landscape and is worth looking at.

Now, towers, on the other hand, I don't particularly care for them if they are plopped out in the middle of a national forest where I want to see trees. But if they are in an urban landscape where we have buildings, then there is some value in looking at them. I think I am going to vote for this one because it seems to me that it begins to say to the community the kinds of things we are concerned about. Okay, we are going to have towers. We don't like them, maybe, but we are going to have them. What kinds of places ought the business folks ought to look for to come in here and get something approved? I think maybe we are making a statement here that is worth us making. Thank you."

FULP "Just a comment, and then I would like to call for the question. I agree that we need communication towers. The demand is going to be greater and greater as they continue to grow. However, I go back to the old adage that my Mom and Dad taught me when we used to go to public restaurants. When I would go to the restroom to wash my hands, as a child, I would take three or four towels. That was fun. My dad used to say 'why take two when one will do'? Here we are not going to have the opportunity for those involved to come together where the community will wind up, filling its needs for the radio station and the telecommunications tower. The community will have, in my opinion, an extra tower. Although I will support the motion, because we do need to enhance our communications ability in that area. I will call for the question."

MOTION: That the question be called.

FULP moved, **WARREN** seconded the motion, and it carried unanimously (11-0).

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition. Frye, Lopez and Miles were not present.

KROUT "Let me just make a few comments. First of all, we will encourage the applicants and this prospective applicant to have some discussions over the next month. In fact, we would refer the services of our third party consultant, who understands radio as well as telephone to facilitate those discussions, although again I would say the relay tower and the broadcast studio is really a different kind of question.

We do have policies in the Code today, but obviously, this is a very dynamic situation. I don't know that we will ever avoid dealing with some of these issues on a case-by-case basis. We might have hired someone to do the master plan and then the relay tower people would walk in the next day, and all of a sudden we would have to start over again and rethink our plan. It is a very dynamic situation, but we do have policies, and we would be glad to sit down with Commissioner Hentzen, who said he would like to have us do something like that to let you know what those policies are today.

We, as staff, don't know an awful lot about the telecommunications business, and about all of this technical information. There is no question that we are all on learning curves as we go through this process, and we could do a better job in some of these cases, I think, in being more proactive. Because we have seen a flurry of cases, the City Council did authorize us to go and hire a consultant, and we are going to try to involve the County as well as the City, to hire a third party consultant to do some more master planning and try to identify the hot spots, work with the carriers, see how the various pieces of the puzzle work, understand the different technologies that are out there today and how technology may be evolving in the future, and maybe we can do a better job than just hearing piecemeal cases. But there is always going to be a next person, someone we hadn't anticipated, a change in the technology, a new carrier. But I think we can improve it, so we are going to hire someone to review our ordinance and review our policies and to work with the carriers to develop something that more approaches a plan. We are developing an RFP, and that will probably result in a six to eight month study. But as you can say, it is a dynamic situation, and I can't tell you that even with the consultant, we will have solved all of the problems."

GAROFALO "I just want to make one comment. With all due respect to my colleague, Commissioner Platt, I for one, and I want to point this out to both parties here and Mr. Yearout that I, at this point, I would see no way in heck that I would support two towers within 100 feet of each other, and that is all I am going to say."

MCKAY "Quite frankly, that is one of the reason why the motion was made. I originally said 150 feet, then went to 200 feet and it is still detracting to the neighborhood. It is still within the fall distance it takes."

EWY "Mr. Chair, if I may address the Commission? I would just like to take this opportunity to apologize for my lack of professionalism to the Commission, to my clients, and especially to Mr. Yearout with my closing comments. I lost track and not only embarrassed myself but the Baughman Company, and as was pointed out by Commissioner Osborne-Howes, and I will try to keep better focused in future cases and try to understand everybody's role in all of this better."

FULP "Mr. Chair, if my watch is correct, I believe we spent one hour and 28 minutes on this case."

JOHNSON "I wanted to make a comment, but the majority of the people that I wanted to make it to have left the room. It seem like every since Marvin got these new chairs, there must be a burr in some of them. I would like to see if he could dig the old ones back out."

4. **Case No. Z-3323** – Robert E. Cooper and Roy W. Cooper request zone change from “SF-6” Single-Family Residential to “GC” General Commercial on property described as:

A tract of ground beginning at a point 743.3 feet south and 935.6 feet east of the Northwest corner of Lot 10, Section 9, Township 28 south, Range 1 East of the 6th P.M., Sedgwick County, Kansas; thence south 110 feet; thence east 50 feet; thence north 110 feet; thence west 50 feet to the point of beginning. Generally located east of Broadway and south of 37th Street South.

DONNA GOLTRY, Senior Planner, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant is requesting a zone change from “SF-6” Single Family to “GC” General Commercial for a 5,500 square foot tract, with dimensions of 50 feet by 110 feet, located along 37th Street South approximately 1000 feet east of Broadway. The applicant is seeking the zone change to store vehicles outdoors legally.

Currently there are about 15 vehicles, some antiques, stored on the property. There is not a primary structure, such as a residence, on the lot. The applicant would like to continue storing the vehicles on the lot, but this requires “GC” General Commercial zoning. The lot abuts an unpaved private road that is the extension of 37th Street South, and is only 300 feet from the banks of the Arkansas River.

The area has the flavor of a river settlement that grew up prior to zoning and subdivision controls. 37th Street South has a dozen residences stretched along its frontage between South Broadway and the river. Most of the residences are in need of maintenance. The property is zoned “GC” General Commercial for a depth of 600 feet from Broadway, and “SF-6” for the remaining 700 feet to the river. There are a few businesses along the street, including a bait shop also owned by the applicant and located on property zoned “SF-6”.

The property north and south of 37th Street has the same zoning pattern of 600 feet of “GC” stretching eastward from Broadway and the remaining property zoned “SF-6”. However, the property to the south is an outdoor vehicle storage yard although the rear portion is zoned “SF-6”. This outdoor storage lot adjoins the property for which the rezoning is requested and is separated by a corrugated metal fence from the subject tract. The property to the north is a mix of residential and commercial. Farther north, the property is zoned with a strip of “GC” all the way to the river and a strip of “LI” Limited Industrial all the way to the river. A commercial greenhouse facility is located on the “GC” tract, and a lake (old sandpit) occupies the “LI” tract.

The area has been the target of a community policing effort to get property owners to comply with health and safety codes. Some of the efforts have focussed on cleaning up a tire storage area and other open storage along the street, as well as addressing other health and safety issues in the area. These efforts have apparently improved the area relative to before the effort began.

The presence of the Arkansas River within 300 feet of the property presents some unique circumstances. Taking a broader look at the area for rezoning would require considering the unique and prominent place that the Arkansas River holds in the urban landscape within Wichita. Riverside Park and the Riverside neighborhood have been a valuable resource since their establishment. Over the last half century, the Arkansas River has been upgraded to become a community focal point through the downtown area and along McLean Boulevard, with a network of museums and parks stretching along its banks downtown. The current construction of Exploration Place will be a major boost in the prominence of the river as well as be a major regional tourist destination focussing interest in the Arkansas River. As one travels southward along McLean Boulevard from downtown to Herman Hill Park on Pawnee, the general character of the river is a wide grassy bank flanked on the west by McLean and a mix of institutional uses (West High), industrial facilities, and further south, residential neighborhoods with back lot orientation to McLean. On the east of the riverbank the back yards of residential neighborhoods are visible. Approaching Watson Park and Broadway, the old concrete bridge over the river at Broadway is visible along McLean. This drive ends only one and one-half miles north of the subject tract. The corner of Broadway and Pawnee is commercial. There is a large apartment complex to the southeast of the shopping center with Wal-Mart. The complex occupies the eastern bank of the Arkansas River.

The character of the urban streetscape changes in the segment of Broadway south of the Arkansas River. The property is occupied by general commercial uses, especially car lots and mobile home sales lots. Railroad tracts separate the river from visibility. However, it is possible that a major parkway improvement effort in this area could expand the existing parkway development to the south and add a valuable resource for community use and potentially a highly regarded residential area with riverfront view. This would probably require redevelopment along Broadway, or perhaps an alternate route adjacent to the Wichita Valley Center Flood Control project that flanks the western bank of the Arkansas River. The Parks and Pathways Park and Open Space Master Plan has already identified the Arkansas River as an existing pathway as far south the application area, and as a proposed pathway continuing southward to MacArthur Road. The Plan shows the pathway on the east bank of the river in the application area.

CASE HISTORY: The property is unplatted.

ADJACENT ZONING AND LAND USE:

NORTH:	“SF-6” Single Family	Single-family residences, bait shop
SOUTH:	“SF-6” Single Family	Open storage of vehicles
EAST:	“SF-6” Single Family	Single-family residences, river
WEST:	“SF-6” Single Family	Single-family residences, businesses
	“GC” General Commercial	

PUBLIC SERVICES: City of Wichita water and sewer services have not been extended to serve the site or the surrounding area. The property has access onto a private road that is the extension of 37th Street South and connects 600 feet to the west to Broadway, a major arterial. It should be noted that 37th Street South is a private roadway only from approximately 100 feet west of the subject tract, and is a public road from that point to Broadway.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies the site and the property in its immediate vicinity, all the way to Broadway, as appropriate for high-density residential development. The Plan recommends industrial for the area beginning 300 feet north and commercial for the area beginning 300 feet south. The Parks and Pathways Park and Open Space Master Plan identifies the corridor along the Arkansas River as an existing pathway (recreational corridor) to this vicinity and identifies the remaining portion of the river continuing to MacArthur Road as a proposed pathway.

RECOMMENDATION: The Comprehensive Plan recognized the potential resource that the presence of the Arkansas River held for desirable high density residential development on this tract, showing it as high density residential even though the segment to the north was shown for industrial and the segment to the south for commercial. However, the character of the existing development along this segment of Broadway, coupled with the existing "GC" zoning on Broadway and the presence of the outdoor vehicle storage lot adjoining the site to the south, makes redevelopment of this site with high density residential improbable without a significant redevelopment effort. Yet, the recent efforts on the part of community policing and the concerns of residential neighbors deserve protection from further encroachment of incompatible uses. With these concerns in mind, staff recommends that a protective overlay approach be used to limit the nature of the permitted commercial uses and to mitigate the impact of the use on the surrounding area. Based on information available prior to the public hearing, staff recommends the request be APPROVED, subject to a Protective Overlay with the following conditions:

- A. Permitted uses allowed in the "GC" General Commercial zone shall be restricted to vehicle storage yard only and to all uses permitted in the "SF-6" Single Family district.
- B. A screening fence of no less than 6 feet or more than 8 feet in height, composed of wood, masonry, or other solid materials, not including chain link or corrugated metal, be installed and maintained along the perimeter of the storage yard, with the design to be approved as to construction by the Office of Central Inspection. No vehicles shall be visible above the top of the fence.
- C. Any violation of these conditions shall result in the Protective Overlay being violated and shall render it no longer in effect.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: The adjacent zoning is "SF-6", with "GC" located approximately 400 feet to the west. The uses on the north are low density residential with scattered commercial/industrial. To the south is another vehicle storage yard.
2. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with its current zoning as residential. It is unlikely a new residence would be constructed in the area upon the lot unless there is substantial redevelopment of the existing residential/business uses in the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: With the conditions imposed by the Protective Overlay, the effect is to allow the continuance of an existing use, but to ensure that it not be visible from the surrounding properties by screening or be converted to other "GC" uses. This should not generate additional adverse effects on the surrounding area. A different concern would be the effect on the possibility of redevelopment of the area for quality high-density residential use. The introduction of "GC" zoning into the rear portion of the property might make redevelopment more difficult. However, the restrictions imposed by the Protective Overlay should also reduce this potential effect.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed use is not in conformance with the Comprehensive Plan.
5. Impact of the proposed development on community facilities: As proposed by the applicant, the impact on community facilities is minimal.

GOLTRY "CPO Council 3 will be meeting on this case tonight. District Council has also reviewed this and expressed some current concerns about the area and expressed the request that it be viewed in terms of current conditions, and also looked at versus what could be done in the future. We might ask for elaboration on that from Marvin if you would like some."

KROUT "District Council member Lambke have been looking has been looking at this area, and I think that Commissioner Garofalo has been out and looking at this area with him. This is an area which 20 years ago, if we had urban renewal funds for we would say 'this is a great opportunity for a brand new residential town in town'. It is a lovely setting. If you walk along the river in this area, and if you can picture all of this land cleared and ready for development, it would be a magnificent opportunity for the City. The question is whether or not this rezoning is going to postpone, hinder or prevent that from happening. We don't think so because it is so narrow and small in size."

HENTZEN "I was down there yesterday to see this, and it is definitely unique. In fact, you have to be pretty alert to find 37th Street to turn east. Just as you get to the bottom of the slope there, there was a lady out on the front porch on the north side holding up a big sign that said 'worms for sale, \$1.00'. And then I got in down there and saw the bait shop and everything.

What I want to ask you, because I think putting up a solid fence around that place is too costly. It is not worth it. Can we allow this operation and not change it to 'GC' General Commercial? I just don't see that that is going to simplify things in the future. Why don't we some way let this gentleman do what he needs to do and not require him to spend money on a fence. I don't know how many hundred feet it is to put fence up, but if you tell me how many hundred feet and I will tell you how much it costs to put it up. I think it is unreasonable. That is what I want to ask staff. Is there something we can do to let him do what he is doing without putting a fence around it?"

FULP "Mr. Chair, I would respectfully suggest that we go ahead and go through the presentation and reserve dialog on this particular issue until we close the public hearing."

JOHNSON "Since he has already asked a question, let's have the answer, and then let's go on with the hearing."

GOLTRY "I believe that the opinion of the zoning officers who originally spoke, and the applicant is here and can speak to this, we are telling him that what he is doing he cannot continue doing that with his 'SF-6' zoning, so he would have to have the 'GC' zoning. The reason we have suggested the Protective Overlay is to look for a way to accommodate this use without opening it up to all potential 'GC' uses and still keep an eye on the fact that the community policing effort has been ongoing in this area to upgrade the neighborhood. In other words, we were trying to come up with a compromise solution that would allow him to store his vehicles without causing an impact on the surrounding land use, and that is why the fence proposal."

JOHNSON "Thank you. Are there any other questions?"

HAGGAR "I thought I heard you say that this has the district council approval. What does that mean?"

GOLTRY "The Council has looked at the issue and is also considering it. They have expressed some concerns about the approval of it."

KROUT "Council member Lambke. He is the Council member for this district."

HAGGAR "Oh. Okay."

KROUT "He doesn't have his mind made up what he wants to do. He hasn't heard the minutes of this hearing and your recommendation, but we wanted you to know that he is watching you."

GOLTRY "He is just expressing concerns to look at the issue versus the immediate range versus the long range applications."

HAGGAR "Thank you."

JOHNSON "Applicant or agent."

ROBERT COOPER "I am the owner of the property in question. I do own both sides of the road from here, clear back to the river. The community police came in there; they did not see that property ten years ago when I bought it. We hauled out over ten trash trucks completely full of trash out of that area, and we are continually trying to improve the area and everything. The community police came in and said they wanted it done now. We had 30 days to do it in. So to be within the law, I had come in and requested to change the zoning on this so I can store these vehicles. That is all I have to say."

FULP "How long have you been using this piece of property for outside vehicle storage?"

COOPER "For over three years."

FULP "Is this your first application to change the zoning?"

COOPER "Yes, it is."

FULP "So you just assumed that since it is your property you could do whatever you wanted to with it?"

COOPER "Well, you see, Zeiner's Bait Shop is commercial and it was way before it was in the City, and I figured that if the Bait Shop was zoned commercial, why wouldn't that little strip of land be?"

FULP "Okay. Just one final question. Do you have any problems, are you in agreement with staff about the fence?"

COOPER "Well, I will put up the fence. I know it is going to financially hurt me a little bit, but I will comply with the staff's recommendations, yes, sir."

FULP "Wouldn't it be fair, since you have been using that property for three years illegally?"

COOPER (Indication) "But from here on is all private. I pay taxes on that road."

WARREN "I have a question of the applicant. Who would be able to see this? Are there houses around there that are going to be offended, or do you own those houses that would be able to see this?"

COOPER "I own all of the houses that would be able to see it."

WARREN "And you lease those to other people, and a condition of them being there is that they have to put up with you?"

COOPER (Laughing) "I guess."

JOHNSON "Are there any other questions? Thank you, sir. Is there anyone else here to speak in favor of this item? Is there anyone to speak in opposition? Seeing none, I will bring this back to the Commission."

CONSOLVER "I would like to ask this question of Marvin at this point. We are doing a Protective Overlay, and seeing as how he has the property surrounding it; it is his property, he would be screening his property from his property. Is it just a part of this, or can we exclude the fencing?"

KROUT "No, you can't do that. It is part of the overlay. This gets into the issue you talked about earlier, about variances, and how far should you go in taking away the Board of Zoning Appeals responsibility? That is clearly their responsibility, waving screening requirements. We have some limited ability administratively to waive requirements when either the topography or vegetation, or the adjoining use not being residential, we have some ability. I guess we could look at that situation. There may be one or two of these lot lines that we can administratively waive, but the Board of Zoning Appeals is the only one who has the authority otherwise to waive screening requirements."

CONSOLVER "So essentially, we go through and approve it as recommended, then his option regarding the fence is to go before the Board of Zoning Appeals?"

KROUT "Right."

WARREN "Would it be wrong for us to recommend that the Board of Zoning Appeals look favorably upon that?"

OSBORNE-HOWES "Yes."

KROUT "I would make that a separate motion if you want to make that a motion. If you do and it passes, we will send it on to the BZA if there is a case about it."

HENTZEN "But that ignores the problem of changing it to 'GC'. I think that, in the future, that whole bank line ought to be some way involved in the City of Wichita's river plans. I just think making it 'GC' is a mistake."

KROUT "And I think that is a concern. It is an issue that we struggled with. On the other hand, I don't think that is going to change the value of this property so much that some day, if the City were to come in and acquire all of this property from the applicant, including all of the residential property around it, that it is going to make that much difference. If this was a request to come in with 20 acres of General Commercial zoning out here, we would tell you no. I just hear some of those who want to put a temporary use to their property, and if there was a simpler way to do that, we probably would recommend that to you, but this is the only we know of doing it."

If it was a larger tract, we think it would be more significant and it is not the property zoning, ultimately for this area. We could redevelop it, but that is the real issue. I think we have raised the real issue of this case."

GAROFALO "I am ready to make a motion, but want to ask if there is any way to do a Conditional Use."

KROUT "No. We don't have conditional uses to allow commercial or industrial uses in residential districts. That was the Butler County's theme is that everything is a conditional Use."

WARREN "How about if we went with 'LC'?"

KROUT "That doesn't allow the outside storage of vehicles."

WARREN "Even with a conditional use?"

KROUT "That's right. Well, it allows outside display and sales, but not outside storage like he wants to. An overlay does the same thing."

MOTION: Having considered the factors as contained in Policy statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: The adjacent zoning is "SF-6", with "GC" located approximately 400 feet to the west. The uses on the north are low density residential with scattered commercial/industrial. To the south is another vehicle storage yard. The suitability of the subject property for the uses to which it has been restricted: The property could be developed with its current zoning as residential. It is unlikely a new residence would be

constructed in the area upon the lot unless there is substantial redevelopment of the existing residential/business uses in the area. Extent to which removal of the restrictions will detrimentally affect nearby property: With the conditions imposed by the Protective Overlay, the effect is to allow the continuance of an existing use, but to ensure that it not be visible from the surrounding properties by screening or be converted to other "GC" uses. This should not generate additional adverse effects on the surrounding area. A different concern would be the effect on the possibility of redevelopment of the area for quality high-density residential use. The introduction of "GC" zoning into the rear portion of the property might make redevelopment more difficult. However, the restrictions imposed by the Protective Overlay should also reduce this potential effect. Conformance of the requested change to the adopted or recognized Comprehensive Plan and Policies: The proposed use is not in conformance with the Comprehensive Plan. Impact of the proposed development on community facilities: As proposed by the applicant, the impact on community facilities is minimal.) I move that we recommend to the governing body that the zone change be approved, subject to the following conditions of a Protective Overlay:

- A. Permitted uses allowed in the "GC" General Commercial zone shall be restricted to vehicle storage yard only and to all uses permitted in the "SF-6" Single Family district.
- B. Screening fence of no less than 6 feet or more than 8 feet in height, composed of wood, masonry, or other solid materials, not including chain link or corrugated metal, be installed and maintained along the perimeter of the storage yard, with the design to be approved as to construction by the Office of Central Inspection. No vehicles shall be visible above the top of the fence.
- C. Any violation of these conditions shall result in the Protective Overlay being violated and shall render it no longer in effect.

GAROFALO moved, **CONSOLVER** seconded the motion.

FULP "Thank you, Mr. Chair. For the record, I have to say this. I probably won't, like a lot of us, won't be on this board very much longer, or by the time they decide to make this a riverfront residential park, as it should be. But Marvin, we talked about setting precedents, sending messages. I think what this board does, and we should try to remind ourselves and each other of this, is that the votes we take, the opinions that we make, others who follow us will be guided by.

We talk so many times about trying to slow down suburban sprawl and come back inner city. This is not the signal that we are sending here if we approve this zone change. Although it may be temporary, and the City sometime may get some urban development money, buy this section up and make some infill housing, what message are we sending today by putting this approval on the record. I have a struggle with that. I have a little moral problem, because I think what we do not only reflects on us today, but will influence the future commissioners.

To me, this is spot zoning, and although this gentleman has a right to use his property and must do it in a legitimate way, I am struggling on how to vote on this because I wish there were a mechanism where you could do it temporarily. Thank you."

MCKAY "The overlay was designed as making a piece of property a single purpose use rather than the zoning which we are going to transfer it to, is that correct?"

KROUT "Yes."

MCKAY "So if this goes into future development and he takes his out, it is no longer zoned that way, because the overlay really is the thing that determines keeping it that zoning. That is why we put the overlay in the zoning. We struggled on that for three weeks during the rezoning process, when we were writing the rules and regulations two or three years ago. I agree with you that if you were going to do it without an overlay, I couldn't vote for it. But with an overlay the way it is now, what we have done is taken a right on his own property to be able to do something. We are just letting him do it. We are saying he has to put a fence up, do this and do that. The minutes he changes that, the zoning is gone. That is the use of an overlay. All of that."

OSBORNE-HOWES "South of this property is single-family, and it says open of vehicles. Does that mean that they have a conditional use or why is that allowed? Let me ask this of staff."

KROUT "Do you know the history of that area?"

COOPER "South of this is a open lot, approximately 100 feet, and then after that 100 feet, you've got the police impound lot. That is for their open storage."

OSBORNE-HOWES "So what we are saying is that the police.... I would like to have this information. It has a lot to do with how I am going to vote."

KROUT "It is not a City owned property."

OSBORNE-HOWES "What is it then?"

HENTZEN "I want to ask Mr. Cooper, he seems to know what is down there. Is the Police impound lot fenced?"

COOPER "Yes, it is."

HENTZEN "What with?"

COOPER "Chain link fence, and the person that owned it bought the land adjacent to mine. He put up a corrugated tin fence up there."

HENTZEN "Do you know that you can't do that?"

COOPER (Laughter) Yes."

OSBORNE-HOWES "I would like to hear what staff has to say about that."

GOLTRY "You have this open field and then you have the open storage of vehicles down in here. It is a privately owned property."

OSBORNE-HOWES "Well, his is, too."

GOLTRY "Well, it may be police impound, I don't know the exact nature of that."

OSBORNE-HOWES "Is there any zoning that would allow that?"

GOLTRY "It would probably be a non-conforming use."

OSBORNE-HOWES "Well, isn't his a non-conforming use?"

GOLTRY "No, his is not a non-conforming use because this only began 3 years ago."

OSBORNE-HOWES "So if he had started this earlier...."

GOLTRY "That is a question I will have to defer to Marvin on the timing."

KROUT "I can't tell you that the use of this is not also illegal."

OSBORNE-HOWES "But the police do use it?"

KROUT "I think it is privately owned and I think they have a contract."

WHEELER "So the police found this one offensive, but they haven't investigated the other one that they go to all of the time?"

MCKAY "Probably different divisions within the City."

GOLTRY "If I could respond. The police have actually said that they consider that the lot where they do have vehicles is what they would consider a relatively cleaned up lot, and they have been working on cleaning up the uses in the area. All of them. As I said, it is an interesting case."

FULP "I have a question of staff. What is the current of the piece of property being used by the police impound yard?"

OSBORNE-HOWES "It is 'SF-6'."

JOHNSON "Marvin wants to make a comment on the motion."

KROUT "The motion includes that you are also permitted in the protective overlay all of the current uses that you are currently allowed in the 'SF-6' district in addition to the auto storage."

GAROFALO "That is fine with me."

JOHNSON "The maker of the motion okays it, does the second agree to that?"

CONSOLVER "Yes."

VOTE ON THE MOTION: The motion carried with 11 votes in favor. There was no opposition. Frye, Lopez and Miles were not present.

5. **CU – 525** - Ritchie Corporation, Inc., c/o H. T. Ritchie (applicant/owner); Baughman Company, P.A., Russ Ewy (agent) request a Conditional Use to allow a rock crusher on property described as:

Beginning at the NW corner of the NW ¼ of Section 36, T-26-S, R-1-W of the 6th P.M., Sedgwick County, Kansas; thence south along the west line of said NW ¼, 1305 feet; thence east parallel with the north line of said NW ¼, 850 feet; thence

north parallel with the west line of said NW ¼, 1305 feet to a point on the north line of said NW ¼; thence west 850 feet to beginning, except the west 60 feet thereof for road. Generally located east of West Street and south of 37th Street North extended.

KEITH GOOCH, Planning Staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

Ritchie Corporation owns an unplatted tract of land bounded by West Street, 37th Street North extended, the Wichita-Valley Center Floodway and 29th Street North extended. Over the years, this property has been zoned for "SF-20", Single-family Residential, "LC", Limited Commercial, "LI", Limited Industrial, "GI", General Industrial uses, as well as received approval of a Conditional Use for sand extraction. In recent years, an asphalt plant and related activities, rock crushing and sand extraction have occurred on this site. There are also material stockpiles on site. The existing asphalt plant has reached the end of its production effectiveness. The applicant would like to replace the existing plant with a newer asphalt plant which will have improved operating characteristics (reduced emissions), and which necessitates re-arrangement of the site layout, including the re-location of the rock crusher and asphalt plant.

Prior to 1996, asphalt and concrete batch plants were "permitted uses" in the "LI" district. With the adoption of the Unified Zoning Code in 1996, such uses now require Conditional Use permits, so the asphalt plant is currently, a legal use. However, County Code Enforcement has determined that, with the plant's relocation further into the site, the plant site will have to meet current code.

To accomplish the re-configuration of the site, the applicant requested and was approved for "LI", Limited Industrial and "GI", General Industrial zoning at the May 27th Planning Commission meeting. The application area is 790 feet wide by 1,305 feet long.

The applicant is requesting a Conditional Use permit to allow a rock crusher on property approved for "LI" Limited Industrial zoning on May 27th. The Conditional Use request is for a 600 foot by 400-foot area located in the middle of the rezoning application area. With approval of the "GI" zoning on the south, the asphalt plant can be moved north and east. The applicant has installed a berm and evergreen landscaping along West Street.

"Rock crushing" is allowed only with a Conditional Use permit by the Unified Zoning Code. Rock crushing is defined as an establishment engaged in crushing rock or stone milling. The rock crusher breaks chunks of concrete and asphalt into smaller pieces which are screened into different size aggregates. The aggregate is then used by paving contractors on local paving projects. Dust from the process depends on the type of material being crushed. Concrete tends to produce more dust than asphalt. The crusher is equipped with systems to reduce the amount of dust produced. Rock crushers must be licensed by the State and follow regulations regarding air pollution. Perceptions of noise generated by rock crushing operations are different at each site, depending on the age of equipment, material being crushed, wind direction, background noise levels generated from adjacent uses, etc.

Property to the northeast and west of the site part of the Ritchie Corporation ownership and plant operations and is recommended for "LI" zoning. Land north of 37th Street North is zoned "LC", Limited Commercial and "SF-20", Single-family Residential and is used for single-family residential and agricultural purposes. Ritchie Corporation owns the Limited Industrial zoned land to the south and uses it for their sand plant operations. Ritchie Corporation also owns the vacant Limited Commercial and "SF-20", Rural Residential zoned land located west of West Street. On land further west, a Conditional Use permit has been approved for a solid waste transfer station.

CASE HISTORY: In association with SCZ-0546, CU-278 approved sand extraction operations in 1985. SCZ-0546 approved "LI", Limited Industrial zoning. In 1993, SCZ-0657 approved "GI", General Industrial zoning for 80,000 square feet located 340 feet east of West Street and south of 37th Street extended.

ADJACENT ZONING AND LAND USE:

NORTH:	"LI" Limited Industrial, "LC", Limited Commercial and "SF-20", Single-family Residential;	residence, agriculture
SOUTH:	"LI", Limited Industrial and CU-278 (sand extraction); asphalt plant and old sand pit	
EAST:	"SF-20", Single-family Residential; sand pit Wichita-Valley Center	Floodway
WEST:	"LC", Limited Commercial, "SF-20", Single-family Residential and CU- for solid waste transfer	91 (sand extraction); CU-512 (approved station); vacant and sand extraction.

PUBLIC SERVICES: West Street is a paved two-lane arterial roadway. County Public Works indicates the paving is thicker than normal due in part to the higher than usual volume of truck traffic due to the landfill being located further north of this application area. The application area has two access points to West Street. Current traffic volumes along West Street are 1,715 vehicles north of 37th Street North and 1,271 vehicles south of 37th Street North. The 30-year projections indicate that traffic on West Street north of 37th Street North will increase to 7,000 trips per day. No public services (sewer or water) are available.

CONFORMANCE TO PLANS/POLICIES: Locational guidelines contained in the Comprehensive Plan indicates that industrial uses should be located near support services and be provided with good access to major arterials and as extensions of existing industrial uses. Traffic from such uses should not feed directly onto local streets in residential areas. Industrial areas should be generally located away from residential areas, and be sited so industrial traffic does not travel through less intensive land uses. With the application of a Protective Overlay, additional considerations include the characteristics of the intended uses, the surrounding uses and zoning districts and the degree to which the specific use would clash with adjacent uses. The land use map shows this as being agricultural. The Planning Commission has an unwritten policy of supporting the expansion or improvement of existing

businesses. Industrial land use strategies include a recommendation that expansions of existing industrial area in rural area is should be expanded where appropriate.

RECOMMENDATION: Staff is recommending that the request be APPROVED, subject to the following conditions:

1. The site shall be developed as indicted on a revised site plan indicating internal circulation, with the berm and landscape buffer maintained along West Street and with aggregate storage areas placed north of the rock crusher as long as the house on the property to the north remains occupied, to buffer the noise from the crusher.
2. Water, or other dust retardant, shall be used as needed to control blowing dust from stockpiled materials.
3. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant so as to minimize blowing dust.
4. The opacity of the dust from the crusher must not exceed 15 percent opacity and emissions of dust from transfer points, i.e. elevators, belts, etc. must not exceed 10 percent opacity as determined by the Wichita-Sedgwick County Department of Community Health, Air Quality Control staff.
5. Stockpiles of raw and finished material shall not exceed 25 feet in height.
6. Any on-site storage of fuels or chemicals must be approved by the Wichita-Sedgwick County Health Department.
7. The applicant shall obtain applicable county, state and federal permits prior to beginning rock crushing operations on this site.
8. Any violation of the conditions of approval shall render the Conditional Use permit null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There is a mix of zoning in the area – “LC”, Limited Commercial, “LI”, Limited Industrial, “SF-20”, Single-family Residential and Conditional Use permits that allow sand extraction and a solid waste transfer station.
2. The suitability of the subject property for the uses to which it has been restricted: The site could continued to be used for its approved uses. However, the applicant indicates that he needs the additional zoning in order to install an improved plant. The new plant should operate more efficiently with improved operating characteristics.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently being used for the same purpose as is being requested with this application. This request is necessary in part due to a change in 1996 Unified Zoning Code - changing asphalt plants from a use by right in “LI” to a Conditional Use in “LI”. The original Conditional Use permit for the rock crusher does not cover the area where the applicant now needs the crusher to be located, so the requested “LI” zoning on the north is required to enable the applicant to request a Conditional Use for the rock crusher. The net result of this request , if approved, will be the expansion “LI” zoning in place of “LC” and “SF-20” zoning, increased “GI” zoning in place of “LI” zoning and the relocation of the rock crusher and asphalt plant.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The request is consistent with the Planning Commission’s unwritten policy of supporting the expansion of existing businesses and the facility is located within one-half mile of K-96 Highway. This use is highly dependent on good truck access to major traffic routes. This site provides that and is at the same time is not in a developed setting where truck traffic will impact a significant number of adjoining property owners.
5. Impact of the proposed development on community facilities: West Street has already been improved to account for truck traffic. No public sewer or water services are available in this area.

GOOCH “Are there any questions of staff?”

MCKAY “What is the closest residence to this location?”

GOOCH “I don’t have it exactly, but it is to the north. I can’t tell you how many feet exactly from the rock crusher.”

MCKAY “Show me where the rock crusher is going to be located on this, your best guess.”

GOOCH “My best guess would be right in here. I can go back to the site plan.”

MCKAY “Oh, no. I am just trying to get it straight.”

GOOCH “It is about in the middle of the application area.”

MCKAY “Okay. Thank you.”

JOHNSON "Are there any other questions of staff?"

HAGGAR "Could we see the overview? So where is the....I guess the transfer station is on the left there?"

GOOCH "The transfer station would be approximately about over in this location."

HAGGAR "Okay. And then as you come on 37th Street to West Street, where is the asphalt plant, and then where is the rock crusher going to go?"

GOOCH "The rock crusher would be approximately in this location, the existing asphalt plant, I think is a little south, and they are going to move that a little more north when they get this all taken care of."

HAGGAR "Did you say a little more north?"

GOOCH "Yes."

WARREN "Who owns the rest of that lake?"

GOOCH "Ritchie owns pretty much everything."

HAGGAR "What else can go there in the residential neighborhood? Is there anything else that can come up here a little more?"

GOOCH "Do you mean in the application area, or around it?"

HAGGAR "We have the trash, we have the rock crusher, we have the asphalt plant, supposedly in an 'SF-20' area. Is there anything else that can go there?"

GOOCH "Well, 'SF-20' is zoned residential, so they would have to rezone that, but there is commercial around, there is industrial around. The 'SF-20' could probably be rezoned, some of it maybe, in the future, so there could be a possibility of a few more applications coming in here for other things in this area."

FULP "I notice in the conditions there is no mention or requirement for participation in the improvement and maintenance of 37th Street North."

GOOCH "Russ is saying that it is a condition of the zoning."

FULP "Of the platting?"

GOOCH "Actually, if you remember right, there was no required platting on this piece of property. All they had to do was to do a drainage plan."

FULP "But there was a requirement placed upon BFI to do certain improvements on that street."

GOOCH "They have to pave 37th Street to their entrance as well as provide a deceleration lane, and deceleration along West and 37th Street."

FULP "Show us where the transfer station is going to be, please?"

GOOCH "I think they are totally outside the 'LC' area. This little rectangle right there."

FULP "Going east on 37th Street, what is the make-up of that road? Where is the entrance to the rock crusher?"

GOOCH "It would be off of West Street. I think there are two entrances. They are on your site plan."

FULP "Thank you."

JOHNSON "Are there other questions of staff? Applicant or agent?"

RUSS EWY "I am with the Baughman Company, the agent for the applicant. I will just start by addressing some of those last issues. Thirty-seventh Street is paved with a very, very, very dilapidated asphalt. I stand corrected, it is just a gravel road. BFI was required to do an excel/decel land to wrap around here to help offset their newly created traffic volume.

As you heard me say last time, the Ritchie Asphalt Plant has been here for some 15-20 years, and the sand operation since roughly 1975 or 1976. Our access points to the site are currently located generally in this location, and the second and third one to serve the asphalt plant as well as the sand extraction plant operation, with further access points on down West Street. I believe Marvin made the comment last week that these were pretty adequately spaced for an arterial section line road. Your last point of this property is that the area that encompasses this Conditional Use case is included within that area that we are zoning, which falls under the requirements of the last Planning Commission to do the drainage plan, to do those additional types of requirements. So there is kind of a cohesiveness with this application and the one that you heard last time.

We are in agreement with staff comments. On condition No. 5, I spoke with staff prior to the meeting. It says stockpiles of raw, unfinished material shall not exceed 25 feet in height. We are asking, again, that that be revised to 45 feet to match what is in the Protective Overlay. We would be happy to answer any questions that you may have?"

MCKAY "And did staff agree to that?"

MILLER "it is on the original rezoning."

EWY "I believe that Marvin was agreeable to revising Condition No. 5, the stockpile height to 45 feet. That to match the Protective Overlay."

JOHNSON "Are there any questions of the applicant's agent? Thank you, Russ. Is there anyone else to speak in favor of this item? Is there anyone here to speak in opposition? Seeing none, what is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There is a mix of zoning in the area – "LC", Limited Commercial, "LI", Limited Industrial, "SF-20", Single-family Residential and Conditional Use permits that allow sand extraction and a solid waste transfer station. The suitability of the subject property for the uses to which it has been restricted: The site could continue to be used for its approved uses. However, the applicant indicates that he needs the additional zoning in order to install an improved plant. The new plant should operate more efficiently with improved operating characteristics. Extent to which removal of the restrictions will detrimentally affect nearby property: The site is currently being used for the same purpose as is being requested with this application. This request is necessary in part due to a change in 1996 Unified Zoning Code - changing asphalt plants from a use by right in "LI" to a Conditional Use in "LI". The original Conditional Use permit for the rock crusher does not cover the area where the applicant now needs the crusher to be located, so the requested "LI" zoning on the north is required to enable the applicant to request a Conditional Use for the rock crusher. The net result of this request, if approved, will be the expansion "LI" zoning in place of "LC" and "SF-20" zoning, increased "GI" zoning in place of "LI" zoning and the relocation of the rock crusher and asphalt plant. Conformance of the requested change to the adopted or recognized Comprehensive Plan: The request is consistent with the Planning Commission's unwritten policy of supporting the expansion of existing businesses and the facility is located within one-half mile of K-96 Highway. This use is highly dependent on good truck access to major traffic routes. This site provides that and is at the same time is not in a developed setting where truck traffic will impact a significant number of adjoining property owners. Impact of the proposed development on community facilities: West Street has already been improved to account for truck traffic. No public sewer or water services are available in this area.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The site shall be developed as indicted on a revised site plan indicating internal circulation, with the berm and landscape buffer maintained along West Street and with aggregate storage areas placed north of the rock crusher as long as the house on the property to the north remains occupied, to buffer the noise from the crusher.
2. Water, or other dust retardant, shall be used as needed to control blowing dust from stockpiled materials.
3. The applicant shall be responsible for maintaining all operational roads in a sand or graveled condition and shall apply water or other acceptable dust retardant so as to minimize blowing dust.
4. The opacity of the dust from the crusher must not exceed 15 percent opacity and emissions of dust from transfer points, i.e. elevators, belts, etc. must not exceed 10 percent opacity as determined by the Wichita-Sedgwick County Department of Community Health, Air Quality Control staff.
5. Stockpiles of raw and finished material shall not exceed 45 feet in height.
6. Any on-site storage of fuels or chemicals must be approved by the Wichita-Sedgwick County Health Department.
7. The applicant shall obtain applicable county, state and federal permits prior to beginning rock crushing operations on this site.
8. Any violation of the conditions of approval shall render the Conditional Use permit null and void.

FULP moved, **HENTZEN** seconded the motion, and it carried unanimously (11-0).

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6. **CU- 523** – Riverside Health System, Inc. c/o Robert Dixon (Owner) and Reflection Ridge Golf corporation c/o Reg Boothe (Lessee) request a Conditional Use to allow outdoor entertainment and recreation on 3.4 acres described as:

Lot 1, Block 3, Reflection Ridge 3rd Addition EXCEPT beginning at the Southeast corner of Reserve F; thence north 72.08 feet; thence Northwesterly along Reflection Road and along a curve, 12.14 feet; thence Northerly along Reflection Road, 102.85 feet; thence West 257.16 feet; thence south 284.65 feet to a point on the south line of said Lot 1; thence east 324.80 feet to the point of beginning. Generally located north of 21st Street North and east of Tyler Road.

KEITH GOOCH, Planning staff, pointed out land use and zoning; and showed slides of the general area. He reviewed the following staff report:

BACKGROUND: The applicant is requesting a Conditional Use on a 4.3 acre platted tract of land to allow for outdoor entertainment and recreation. The applicant is proposing to operate a temporary golf driving range on this property located north of 21st Street North and east of Tyler Road.

The applicant has submitted a site plan, which shows 15 tee boxes located near 21st Street North and would be a minimum of 35 feet north of 21st Street. There would be three glow targets the golfers would attempt to hit. The farthest glow ring would be approximately 380 feet from the tee boxes with a 20 foot high netting constructed along the east and west property lines to protect the surrounding properties. Only short irons would be permitted at this facility. The hours of operation as requested by the applicant would be 10 a.m. to 11 p.m. everyday. The driving range is experimental in the Wichita market, and the applicant has stated that if successful it would be moved to a permanent location.

A port-a-potty and snack bar would also be provided on-site. The Wichita-Sedgwick County Health Department and Office of Central Inspection would have to approve this type of sewage collection and the requirements on the concession stand. The Office of Central Inspection has stated that are typically only permitted for 30 to 60 days and no longer, and that concession stands have to be tied down to meet code requirements.

Patrons of this business would park in the medical building parking lot east of this site. Based on the initial building plans for the medical building, there are an extra 38 parking spaces. The Unified Zoning Code would require the applicant to provide 15 parking spaces for the driving range (one per tee box).

Village Charters is located to the east of this property zoned "LC" and "GC." North of the property is the Reflection Ridge Golf Course on property zoned "SF-6." A medical office building is located to the east of this property, zoned "LC." South of the application area is the New York Bagel on property zoned "LC."

CASE HISTORY: This property was rezoned from "SF-6" to "LC" in 1987.

ADJACENT ZONING AND LAND USE:

NORTH:	"SF-6"	Reflection Ridge Golf Course
SOUTH:	"LC"	Restaurant
EAST:	"LC"	Medical office building
WEST:	"LC" and "GC"	Village Charters

PUBLIC SERVICES: This site is located adjacent to 21st Street North, a four-lane arterial with current traffic volumes of 14,425. The 2020 Transportation Plan estimates these volumes will increase to 17,610. The Wichita Capital Improvement Program does not project any improvements along this stretch of 21st Street. Municipal services are available to serve this site.

CONFORMANCE TO PLANS/POLICIES: This site is identified by the Wichita Land Use Guide as appropriate for commercial uses. The commercial locational guidelines of the Comprehensive Plan state that commercial development should have required site design features which limit noise, lighting, and other activity so as to not adversely impact surrounding residential areas. Commercial uses not located in planned centers, including large freestanding buildings, auto-related and non-retail uses, should be guided to areas such as the CBD fringe, segments of Kellogg, and other appropriate areas and streets where these uses may already exist or to locations where traffic patterns, surrounding land uses and utilities can support such uses.

RECOMMENDATION: This is an outdoor non-retail use along 21st Street North, which is identified as a major entrance corridor to the City of Wichita by the Comprehensive Plan and for which the appearance of the street and the uses permitted along this street are a special concern. Planning staff does have hesitations on permitting a driving range, port-a-potty and a portable concession stand along 21st Street because of this road's designation. The golf course to the north does not have a 20 foot high netting, glow rings, port-a-potty or other outdoor features similar to this request. All long-term parking affiliated with Village Charters is behind a six-foot tall masonry wall. Golf Park West to the east and south of the application area is the only similar use in the immediate vicinity. All outdoor uses on the Golf Park West development are located approximately 150 feet south of 21st Street.

However, due to this request being only a temporary use as requested by the applicant, staff is recommending approval of the request, subject to the following conditions:

1. The Conditional Use for outdoor entertainment and recreation shall only be valid for one year from the date of approval by the Planning Commission if not appealed or one year from the date of approval by the City Council if appealed. The operation of this facility shall be from 10 a.m. to 11 p.m.
2. The applicant shall submit to the Planning Department a letter from the Health Department and the Office of Central Inspection approving the on-site sewage facility and also the concession stand, prior to the opening of the business. The

applicant shall also submit a lease agreement from the medical complex to the east for the number of required parking spaces to the Office of Central Inspection in a form that is acceptable to that office.

3. No outdoor lighting shall be permitted except minimal lighting required by code for safety purposes. (i.e. the path from the parking lot to the tee boxes and around the tee boxes)
4. Development of this property shall be in general conformance with the approved site plan with a maximum of 15 tee boxes. All buildings, tee boxes, and concession stands shall be at a minimum 35 feet from the 21st Street North right-of-way.
5. The netting along the west side of the golf driving range shall be 50 feet in height.
4. Any violation of these conditions shall render the Conditional Use null and void.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: There is commercial development located to the west, south and east on property zoned "LC." The area to the west is also zoned "GC" and is permitted the outside storage of vehicles. North of the application area is a golf course, zoned "SF-6."
2. The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "LC" and could be developed with any number of uses permitted in this district. The applicant has stated that in the future the medical complex to the east plans on expanding into the application area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Because this development is temporary, the impact on the surrounding properties should be limited. The property to the east actually owns this property and has permitted the application to be submitted. There is an existing golf course to the north. West of the site is Village Charters zoned "LC" and "GC." There is a large parking lot on this property where vehicles are stored outside behind a six-foot tall masonry wall, while persons are on tours.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this area as appropriate for commercial uses. Outdoor recreation and entertainment is permitted in the "LC" district if a Conditional Use permit is obtained.
5. Impact of the proposed development on community facilities: This development should not generate significant amount of traffic, therefore there should not be a significant impact on the traffic patterns in the area. No impact is expected on municipal services.

GOOCH "Staff is recommending approval of this request, although they are hesitant to permitting a porta-potty and a concession stand. As I understand, the concession stand would be a typical Pepsi or Coke concession stand on two wheels, rolled on to the site and left there. It would have to meet with Central Inspections approval as well as the Health Department's approval.

As I said, staff is recommending approval, subject to conditions found on Page 3, which limits this Conditional Use to a one-year time frame from either this Planning Commission hearing, or if it appealed on, from the governing body. Are questions of staff?"

HAGGAR "I missed the time limitation that you mentioned. What was that about?"

GOOCH "That was a one-year limitation."

HAGGAR "What was that for?"

GOOCH "A one year limitation for the use of this."

HAGGAR "And after the year?"

GOOCH "They either re-file, or move to a new, permanent location, or maybe even another temporary location."

WARREN "Where is this, I think it is a Cornejo Golf Complex. Is that right across the street?"

GOOCH "You can see it right here. (Indicating) It is in this area right here. Golf Park West, I think, or they might have changed it to All-Star Sports now."

GAROFALO "My question is two-fold. One is the time frame, both of the operation to 11:00 o'clock, and the other one is about the one year. Why is it one year? They must have requested it, but why?"

GOOCH "The applicant has requested that this is a temporary location for this facility. It is experimental. If it goes well, they said they will move it to a different location, to 21st Street, as stated in the staff report. It has been designated as a major entrance corridor to the City of Wichita by the Comprehensive Plan, and therefore, staff attempts to make sure that the appearance of the street and the use of the permit along the street are nice, aesthetically pleasing. They don't impact the surrounding properties too

significantly. Staff was kind of wavering on this, whether to support it or not, but since it is on such a temporary basis, they were more willing to go along with it."

GAROFALO "I guess what I was thinking is that the one year seems like a long time. Why not just 6 months?"

GOOCH "Well, it is the middle of June already almost, by the time the protest period would be up, it would be July 1st. They have to do some construction with the netting and everything, so it would be almost August, so therefore, they are only going to have three or four months of this where they will be able to utilize it, so they would probably come back and ask for an extension anyhow."

GAROFALO "Okay. Another question I had was on the length of the netting. How far is that netting supposed to go? You talked about the height, is it going to run 500 feet, or what?"

GOOCH "I guess that is not in the conditions, but I guess we would probably propose that it would have to go from the tee boxes to the north property line."

GAROFALO "And what about on the east side?"

GOOCH "The east side is 20 feet in height. The reason we did request the 50 feet, now 48 feet, is that Village Charter did call us and complain about that. The individuals on the other side have not called us or discussed it with us, so we assumed that 20 feet would be okay with them. If they had called us, we probably would have changed it."

GAROFALO "The only other questions I had was the 11 o'clock. Well, two questions. The 11 o'clock thing and maybe that is proper, I don't know."

GOOCH "It is surrounded by commercial uses on three sides. To the north there is some residential, but you have to go across the golf course to get there. There is not really very much lighting associated with this, except along a path from the parking lot to the tee boxes; therefore, 11 o'clock seemed okay. Actually, the driving range is open until midnight on some nights, and they have lighting adjacent to residential property."

GAROFALO "So this won't have lighting out on the range?"

GOOCH "No. There will be no lighting out there. They are glow rings and glow in the dark, so they don't need lighting out there. The balls also glow."

OSBORNE-HOWES "Why is staff recommending this? I read the recommendations and such, but just across the street I know what the Cornejo family had to go through to get some of the changes done. The landscaping that we are requiring and the discussions that we have had for all types of businesses going in along 21st Street. This means that for a year this would operate with really no landscaping, and I don't see anything on parking, or having porta-potties out there."

GOOCH "As far as Porta-potties and a concession stand, it sounds to me like Central Inspection is not going to permit those, so they won't be there."

OSBORNE-HOWES "So you just can't use the restroom or drink anything while you are out there, right? Why is staff recommending this?"

GOOCH "Staff is recommending approval, basically due to the fact that it is temporary."

OSBORNE-HOWES "And the owner is saying that they would have to move this anyway, or they might move it, or what?"

GOOCH "It is only a one-year time frame, so they will have to move or they will have to come back for a permanent application, and therefore staff would re-evaluate this."

OSBORNE-HOWES "When I read this I thought that maybe this meant that regardless they would want to move within a year. I will ask them."

GOOCH "They will have to if it is approved as staff is recommending. Maybe not moved, but they would have to reapply."

CONSOLVER "I guess I can't hardly let this go by. I spent twenty years in this business on a driving range here in Wichita, and I know that they have some problems on it before they even go in. One, the fence is not high enough on either side. Secondly, you are not going to have anything unless you do light that up. I know the glow rings are a great idea, but they are going to have to have some kind of lighting on it or people won't do it. The third thing is that you had better have a concession stand, a parking lot and a restroom to use. Some sort of a structure they can go do, whether it is something you can take down and move later or not. I think the biggest problem is that they need to find out, on that narrow piece of land, hitting those balls down there, I guarantee that there will be people on that driving range who will be driving those balls over into that medical center and also over into that bus station. I know that is not what they are supposed to do, and they know they aren't supposed to do it, but they will do it. We had property twice as big as that for a driving range, and we had people complaining. They shut us down at 10 o'clock."

GOOCH "I don't doubt any of that. The Golf Park West was permitted with a 50 foot tall fence. Staff considers that if they do impact the surrounding properties they will have to make appropriate means to those people that they do impact. The lighting, staff does not feel that it is appropriate to have lighting out there, especially as they do on Golf Park West, due to the fact that it would impact

the surrounding uses a little bit more as well as impact the property to the north. They can look right into this piece of property. If they can't utilize it without the lighting, therefore in a year, this will go away and the applicant will decide that this is not appropriate here in Wichita and that he might need to do something else."

CONSOLVER "I don't think I would go so far as to say that it wasn't appropriate in Wichita."

GOOCH "These are the conditions feels are appropriate on there. If they can't live with those, then they will either have to ask for different ones or they are going to have to find a different site."

WARREN "Do you have any idea how high those walls are on Golf Park West?"

GOOCH "Fifty, if I remember correctly."

JOHNSON "Are there any other questions? Applicant or agent."

REG BOOTH "I represent Reflection Ridge Golf Corporation. I might tell you the reason I want to test this concept on this site. I have a golf course that adjoins this property, and I can share mowing equipment, ball picking equipment, staff and other facilities which are all in place, convenient to this property."

The concept uses a target. The target doesn't glow. It uses a string lighting system, a low voltage system, but it shows up very well on a dark range and looks almost like neon. It uses a golf ball that glows in the dark. So the darker the range, the better the conditions for the test of this operation.

I live in Wichita. Have lived here all of my adult life. I do a lot of things in business and in experimentation. I like to do exciting things, I like to pioneer things, I like to do things in Wichita, because it is my home. I think it can contribute to our economy as well to the success of my businesses. I will tell you that we are going to test this in Phoenix, Arizona, which is a bit more suitable to testing a golf concept because it is the golf Mecca of the world, and we are going to do it in Wichita, Kansas also. Just because I can't monitor it as well in Phoenix, but in my own back yard, I live just north, in Reflection Ridge, just north of the facility. I can keep an eye on it, I can watch the problems and if a person hits a pitching wedge 200 yards, we will have to penalize them. They can't come back any more. That is if we aren't afraid of them because of their size.

I just want to be available to answer any questions you might have. It is purely experimental, purely temporary. I think I am going to know in 90 days whether I am going to roll this thing out nationally or whether we are going to forget it. That is the reason for the short-term request. Riverside has plans for this property in a year, probably."

FULP "Do you think you can work out the Health Department and Central Inspection's concerns so that you can have some sort of concession stand?"

BOOTHE "A concession stand is not essential to us. We are interested in testing the glow ball, glow target facility. There are concession stands within walking distance all up and down 21st street from us, so we don't have to have that. It is not essential."

FULP "For those of us who golf, and I have played night ball before with the glow balls, if you find a person who can hit a glow ball with a pitching wedge 200 yards, I will sponsor him on the PGA Circuit. If you can hit one of those 100 feet in the air...."

BOOTHE "This is not the traditional glow ball, the stick ball. This is a regulation golf ball that glows in the dark. You could hit it, with a driver, you could hit it 250 yards."

HENTZEN "Mr. Boothe, how many people would be there at one time, do you think?"

BOOTHE "I will tell you this. We are planning to have 15 tee boxes. At night we are only going to operate 10 of them. The ultimate optimism would be that in a day operation that we have one person on each tee box and one person waiting for each tee box, which would be 30 people. You have to be pretty optimistic to have that happen, I think."

GAROFALO "I will ask you the same question, Reg. Do you think you need a year for this? You said something about 90 days."

BOOTHE "Yeah. No, I really don't think I will need a year. If I can't learn what I need to know before we shut down for the winter, I probably wouldn't open it in the spring anyway. My intention is not to be here long term, definitely."

GAROFALO "So if it was for, say 6 months, you wouldn't have a problem with that?"

BOOTHE "I could accept that."

JOHNSON "Are there any other questions? Thank you. Is there anyone else here to speak in favor of this item? Is there anyone here to speak in opposition?"

RICK MARNEY "I am the owner of Village Charters. I guess I am a little bit confused as to who the applicant is here. We have written down here that it is Riverside Health Systems, not Reflection Ridge. There are several things. The primary one I am concerned about is damage to the vehicles that we have over in our facility. Both to the motor coaches and to private cars that are parked there while they are out on tour. I don't care what size of fence goes in there, a 50 foot is going to stop some, but it is not

going to prevent people from hitting balls over there. We currently get about a dozen balls a week in our lot already, from the golf course. But most of the people park to the south end of the lot and come in the north end so it hasn't provided any damage there.

However, in this case, I think there has to be some provision for where the damage can be compensated for. It will occur, it is just a matter of when. To substantiate that, I want to take you back about a year ago. On TV, just before the US Open, they televised the demonstration of new clubs. A well-known pro was hitting one of the new clubs and bragging on how he could hit it over the fence and hit this house over there, and that he would probably have to buy a few windows. He can do that, but when people come back from their tour and get in their car and find a broken window, they will come to me and I will have to go find Mr. Boothe, I guess, and argue about compensation for it. I shouldn't have to do that. I would ask that a bond be required that can be drawn upon to compensate the people for their damages.

Secondly, if Reflection Ridge is operating it and the medical center is providing the parking, since we have parking on the other side, obviously, people are going to come park in our lot as well, I would guess, and I am not in favor of that. I am not here to provide parking for that operation.

My last point would be that if Reflection Ridge is actually the owner/operator of this, why isn't it being put on the ground to the north of our facility which is vacant and a much larger piece of ground. Thank you for your time."

MCKAY "I want to make a statement. I don't know how in the world we can require a bond. If somebody threw a rock and hit a window and then all of a sudden it belongs to this. I don't know that we could do that."

JOHNSON "Are there any other questions or comments? Is there anyone else here to speak in opposition? The applicant has two minutes for rebuttal."

BOOTHE "I just want to say that I am just as sensitive to the damage of anyone's cars in the area as our neighbors are. I guess if there is a damaged car and our balls will be very clearly identifiable, and there is one in the area, I will replace the window. I will do it with a bond, an insurance policy, or whatever the need may be. I don't want to be destructive. We have made 21st Street a pretty good looking place and we don't intend to change that now."

MCKAY "Reg, the gentleman made the comment that the land to his present location you also own, and why didn't you go there?"

BOOTHE "This is a market test. One of the main things I am wanting to test in this concept is the reaction to the passerby. So I am wanting to do it on the high traffic count on 21st Street."

MCKAY "Okay."

WARREN "What kind of signage or identification did you intend to have?"

BOOTHE "Probably a temporary banner-type thing that just simply has a name. It will be called Glow Range."

WARREN "I take it you will have a front fence also?"

BOOTHE "No."

JOHNSON "Are there any other questions? Thank you. What is the pleasure of the Commission?"

FULP "Mr. Chair, I would like to ask our learned counsel, Mr. Lang to address the bond issue."

JOE ALLEN LANG "As you may or may not know, Reflection Ridge Golf Course, on their operations takes the position that it is the individual golfer and not the golf course that is responsible for damage done by golf balls. That is consistent with the position the City of Wichita takes on the City owned golf courses. So in the normal operating procedure, you would expect them to take that position on claims of damage.

Mr. Boothe has offered here to set up a procedure and I think this Commission could set, as one of the conditions on a Conditional Use, as you may establish whatever reasonable conditions you want. If this Commission wants to set up a procedure by which the applicant provides a bond or an insurance policy that will assure payment of damage caused by golf balls, I think that is an appropriate way. I don't think the City or this Commission wants to get in a position of determining those claims, but to ensure that a procedure is set up where they can be drawn upon."

FULP "I know that golfers generally walk methodically from shot to shot, but when they do occasionally stray a ball and hear a clang or crash, they scurry, like little squirrels."

CONSOLVER "Wouldn't you have a different situation here though? I don't know how you could acquire it, and I don't want to get into that, but here you have a situation where it all belongs to the private owner."

LANG "Correct. And that is a good rationale for holding the driving range responsible because the golfers are not using their own balls and clubs, although it is still the golfer that is the factor that causes the damage. I think it could be reasonably valid that you could hold the operator responsible."

CONSOLVER "I guess my rationale in thinking about that is that all of the people, in fact a large majority in these tests, I would suspect, are not what you might call 'golfers', but people who walk in off of the street, who have seen the bright lights, and think 'gee what a great place to take my girlfriend; let's go out here and hit some golf balls and see what we can do with it'. That is where the greatest liability comes from on those because those are the people who don't understand the responsibility of where they hit the ball."

JOHNSON "What is the pleasure of the Commission?"

MOTION: Having considered the factors as contained in Policy Statement No. 10; taking into consideration the staff findings (The zoning, uses and character of the neighborhood: There is commercial development located to the west, south and east on property zoned "LC." The area to the west is also zoned "GC" and is permitted the outside storage of vehicles. North of the application area is a golf course, zoned "SF-6." The suitability of the subject property for the uses to which it has been restricted: The property is currently zoned "LC" and could be developed with any number of uses permitted in this district. The applicant has stated that in the future the medical complex to the east plans on expanding into the application area. Extent to which removal of the restrictions will detrimentally affect nearby property: Because this development is temporary, the impact on the surrounding properties should be limited. The property to the east actually owns this property and has permitted the application to be submitted. There is an existing golf course to the north. West of the site is Village Charters zoned "LC" and "GC." There is a large parking lot on this property where vehicles are stored outside behind a six-foot tall masonry wall, while persons are on tours. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this area as appropriate for commercial uses. Outdoor recreation and entertainment is permitted in the "LC" district if a Conditional Use permit is obtained. Impact of the proposed development on community facilities: This development should not generate significant amount of traffic, therefore there should not be a significant impact on the traffic patterns in the area. No impact is expected on municipal services.) I move that we recommend to the governing body that the request be approved, subject to the following:

1. The Conditional Use for outdoor entertainment and recreation shall only be valid for one year from the date of approval by the Planning Commission if not appealed or 6 months from the date of approval by the City Council if appealed. The operation of this facility shall be from 10 a.m. to 11 p.m.
2. The applicant shall submit to the Planning Department a letter from the Health Department and the Office of Central Inspection approving the on-site sewage facility and also the concession stand, prior to the opening of the business. The applicant shall also submit a lease agreement from the medical complex to the east for the number of required parking spaces to the Office of Central Inspection in a form that is acceptable to that office.
3. No outdoor lighting shall be permitted except minimal lighting required by code for safety purposes. (i.e. the path from the parking lot to the tee boxes and around the tee boxes).
4. Development of this property shall be in general conformance with the approved site plan with a maximum of 15 tee boxes. All buildings, tee boxes, and concession stands shall be at a minimum 35 feet from the 21st Street North right-of-way.
5. The netting along the west side of the golf driving range shall be 48 feet in height.
6. Any violation of these conditions shall render the Conditional Use null and void.

FULP moved, **CONSOLVER** seconded the motion.

WARREN "I have a pretty good track record for voting for business and for free enterprise, but I am going to oppose this one on the basis that if he doesn't have a front fence or any controlled entry point, he is going to use parking places of others, and others are going to have to provide his parking places. I don't believe that you could go out there and stay very long without having to have a bathroom. I question his bathroom facilities. I think there is an obligation, if we are going to get into business, we have an obligation to provide some of the basic, essential things. I don't think this is quite fair to ask others to provide for him what he should be providing for himself. So I am going to oppose the motion."

WHEELER "I have a question, maybe of Marvin, clarification from staff on the port-a-potties. Will there be a restroom facility required, or will port-a-potties be required, and are those acceptable?"

GOOCH "Port-a-potties, as I understand from Kurt Schroeder are not acceptable for more than 30 to 60 days. As far as the required restroom facilities, I had a little conversation with Central Inspection, and it sounded like to me that they probably would require some sort of restroom facilities....not port-a-potties. Now the question could arise whether that would be available through Riverside or hook up with some other form. They are required to meet Central Inspection and Health Department requirements; therefore, if there are restrooms provided they will be required to provide them, and port-a-potties, as I understand right now, will not be permitted."

WHEELER "One reason I asked that is the experience in Old Town where there was kind of a shell and share house with port-a-potties, so I was just curious as to whether that is a typical City allowance on some things."

GOOCH "As I understand from Central Inspection, that is not typical. It should be for only 30 to 60 day time frame. Maybe they are going to remove those and they are going to build something now, I don't know."

FULP "On Item No. 2 in the Conditions does require the applicant to satisfy, as staff has just reiterated, the Health Department and Central Inspection, in relation to sewage. If you can't get beyond that, it is done. Right? It dies. But I do recognize my colleague's concerns of time. This might also be helpful to the applicant in ironing out his problems in terms of the temporary sewage. If you show only a 6 month Conditional Use, in my opinion. Therefore, if the second will agree with me, I will change my motion as made, with one exception and that is changing the time period to a 6 months Conditional Use."

CONSOLVER "Before I do that, I would like to ask the applicant a question. The first item is what kind of a problem is the sewer situation, the bathroom going to present to you?"

BOOTHE "I would anticipate two things in that regard. I would guess that at least 50 per cent of the people using this facility will walk from residences or ride golf carts from residences to this facility. Secondly, I would guess that the average visit will not be longer than 60 minutes, so most people don't have to wee wee every 60 minutes. So that is probably not a big factor."

CONSOLVER "I guess my question to you in talking about one year, six months, which we have done, my question now is we are talking 30 to 60 days."

BOOTHE "If you approve it that way, then the next step in my decision process is to go to Central Inspection and if they say 'you have to have a port-a-potty, No. 1, and we will let you have it for 60 days, then I will have to decide if I want to make the investment necessary to try this thing for 60 days. That is what will have to happen. That is how I see the sequence of events."

CONSOLVER "I will concur with seconding the motion."

JOHNSON "Okay, the motion is being changed to a time limit of 6 months."

OSBORNE-HOWES "I appreciated listening to Mr. Boothe. I don't think I am going to support the motion. I think the reason is that I am in market research, and I believe in test marketing. I understand the need to test market in this community, and why Wichita would be an appropriate place. That doesn't mean that I would necessarily approve this particular location. In terms of a test market for you and for you alone for your purposes, I think this is obviously a great location. I mean, 21st Street would be great. It is right by a golf course, etc., etc. But I guess because of this location, I am thinking, over the last several years what we have gone through at the intersection of Tyler and 21st Street, and I can't help but remember back to the Miner Mike's issue when they came back and wanted to talk about outdoor recreation and the discussion of the neighborhood and some of the problems that developed from that. I remember all of the work the Cornejo family has gone through to work closely with the neighborhood on landscaping and other issues that they were required to do from the get-go.

I think this would set a precedent that says that a company can go in and put a temporary location in without having to do anything and operate it for a season. I think this would hurt 21st Street. So for all of those reasons, I just can't support this."

HAGGAR "I just want to ask the Counselor just one more question. I know that this is a special condition, and you talk about normal golf operation, and regardless of what we say, we put some conditions in here, we added some conditions, we stipulated some conditions. You don't think the public has any liability if something happens, since we are not doing normal business? You don't think there would be any liability to the public if something happened?"

LANG "Liability for whom?"

HAGGAR "The public is us. The City. We are creating a new condition, and you mentioned that basically the operator is going to take care of that. I am saying that since we are creating new conditions, you don't think the public has any liability?"

LANG "It would be our opinion that you and the City would not because this is a recreational activity and your liability arises only if your actions are gross and wanton, and I do not think so. There may be some political liability for this decision, but I do not think it is the type of decision that would create any legal liability."

AMENDED MOTION:

That the request be approved, subject to the following:

1. The Conditional Use for outdoor entertainment and recreation shall only be valid for six months from the date of approval by the Planning Commission if not appealed or 6 months from the date of approval by the City Council if appealed. The operation of this facility shall be from 10 a.m. to 11 p.m.
2. The applicant shall submit to the Planning Department a letter from the Health Department and the Office of Central Inspection approving the on-site sewage facility and also the concession stand, prior to the opening of the business. The applicant shall also submit a lease agreement from the medical complex to the east for the number of required parking spaces to the Office of Central Inspection in a form that is acceptable to that office.
3. No outdoor lighting shall be permitted except minimal lighting required by code for safety purposes. (i.e. the path from the parking lot to the tee boxes and around the tee boxes).

4. Development of this property shall be in general conformance with the approved site plan with maximum of 15 tee boxes. All buildings, tee boxes, and concession stands shall be at a minimum 35 feet from the 21st Street North right-of-way.
5. The netting along the west side of the golf driving range shall be 48 feet in height.
6. Any violation of these conditions shall render the Conditional Use null and void.

FULP moved, **CONSOLVER** seconded the motion.

VOTE ON THE MOTION: The motion carried with 8 votes in favor (Johnson, Wheeler, Hagggar, Fulp, McKay, Consolver, Garofalo and Hentzen), and 3 in opposition (Warren, Osborne-Howes and Platt).

WARREN "I would like for us to take note that Commissioner Fulp and Commissioner Hentzen voted together, and Commissioner Osborne-Howes and I voted together."

FULP "And we should take note that Commissioner Warren actually voted no on a development of business issue."

KROUT "Let me just say that this is the final action unless it is appealed by a property owner within 200 feet, in which case it will go to the City Council."

7a. Case No. DP-138 Amendment #2 – YMCA of Wichita c/o Dennis Schoenbeck (Owner), Cellular One c/o Bill Ames and Baughman Company c/o Russ Ewy request an amendment to Parcel 5 of the Meridian Outlet Mall CUP to allow a communication tower as a permitted use; and

7b. Case No. Z-3324 – YMCA of Wichita c/o Dennis Schoenbeck (Owner), Cellular One c/o Bill Ames and Baughman Company c/o Russ Ewy request to rezone from "LC" Limited Commercial to "GC" General Commercial on 85 feet by 85 feet of property described as:

The South 85 feet of the west 85 feet of Lot 4, block 1, YMCA South Addition, Wichita, Sedgwick County, Kansas; and

Lots 1-3 inclusive, Block 1 YMCA South Addition, Wichita, Sedgwick County, Kansas. Generally located north of I-235, approximately one-half mile west of Meridian.

DONNA GOLTRY, Planning staff, pointed out land use and zoning; and showed slides of the general area. She reviewed the following staff report:

BACKGROUND: The applicant proposes to amend Parcel 5 of the Meridian Outlet Mall CUP (DP-138) to allow, as a permitted use, a 150 foot communication tower and to rezone 7,225 square feet from "LC" Limited Commercial to "GC" General Commercial. The application area is located north of I-235, approximately one-half mile west of Meridian, in the extreme southwestern corner of a larger tract, the Meridian Outlet Mall. The Meridian Outlet Mall is bordered by Meridian on the east, by a drainage channel extending from the end of Sheridan to I-235 on the west, by 33rd Street South on the north, and by I-235 on the south. The application area is adjacent to Parcel 4 which is currently being developed as the Wichita YMCA New South Branch.

The applicant has submitted a site plan, which shows two 12 by 20-foot buildings, each of which could be used by two separate carriers, and another 8 foot by 12 foot pad site for a third potential carrier. The 150-foot "monopole type" tower would be located in the northeastern portion of the site. A six-foot tall chain link fence with three strands of barbed wire is shown surrounding the tower and pad sites to enclose the area between the buildings and prevent unauthorized access to the site. A gate at the southeastern corner of the fenced area would allow authorized entrance to the site via open space to the YMCA parking lot approximately 1000 feet to the east. All development is located in the northeastern quadrant of the site in order to comply with the 35 foot setback required on the southern and western property lines by the CUP.

The site is Parcel 5 of the CUP, created by administrative adjustment May 9, 1999, from Parcel 4 of the CUP. This adjustment reduced the size of Parcel 4 from 57.90 acres to 57.73 acres and created Parcel 5 with 7,225 square feet and a maximum height of 35 feet, maximum coverage of 35 percent, and maximum gross floor area of 35 percent. Uses were limited to outdoor and indoor recreational uses, the same as previously allowed for Parcel 4. In order to allow the development of the communication tower, the applicant is now seeking an amendment to the CUP to allow "commercial communication tower" as a permitted use and a zoning change from "LC" to "GC" as required for communication towers. In addition, the applicant is seeking a variance to the compatibility setback requirements of 345 feet to 50 feet from the Board of Zoning Appeals on June 22 (BZA 17-99) to allow the tower to be 150 feet in height.

The Unified Zoning Code permits communication towers in the AGC® General Commercial and more intensive districts. By-right. However, the Zoning Code requires the applicant to provide the following information, in order to ensure that no more new towers are constructed than are absolutely necessary:

- (1) There is no available space on existing or approved towers or other structures which can be utilized to meet the applicant's communication needs;

- (2) There is no other physically and/or fiscally feasible opportunity to rebuild an existing tower or other such structure on which the communication equipment may be located, or to modify an approved tower or other structure. A rebuilding opportunity will be considered fiscally feasible if the cost of rebuilding an existing tower is no more than the cost of building a new tower on a new site;
- (3) The owner of the tower shall agree in writing at the time of the issuance of a building permit the following:
 - (a) That the tower is designed to accommodate at least three communication companies and that reasonable accommodations will be made to lease space on the tower to other communication companies so as to avoid having a proliferation of towers which are not fully utilized, and
 - (b) The owner of the land and the tower will make available in the future the opportunity for another party to pay the cost to rebuild the tower to support additional communication equipment where physically and fiscally feasible.

A copy of the applicant's statement addressing these items is attached to the staff report. This information has been submitted to an engineering consultant retained by the Planning Department. As of the preparation of this report, the comments have not been received from the consulting engineers.

The surrounding land use is a mix of institutional, quasi-institutional and transportation uses. As previously mentioned, Parcel 5 is carved out of the southwest corner of a 58 acre tract (Parcel 4 of Meridian Mall Outlet) that is being developed as the Wichita YMCA South Branch ("YMCA"). The YMCA is constructing a large indoor recreation facility on the center of the tract, accessed from a serpentine parkway connecting with Meridian. The site plan includes eventual development of eight soccer fields and 18 baseball/softball fields. To the west of the site, there is a drainage channel and a large open field owned by USD #259. Cleveland Traditional Magnet Elementary School is located on the northern portion of the tract. To the south of the site is I-235, but there is no direct access to the highway from the site. There are two large church properties located south of I-235 across from the site. The nearest residential areas are Southwest Village Fourth Addition beginning 900 feet northwest of the site and Southwest Village Third Addition beginning 1,200 feet north of the site.

CASE HISTORY: YMCA South Addition was platted July 7, 1998. The property was rezoned "LC" and approved as Meridian Outlet Mall Amendment #1 March 3, 1998.

ADJACENT ZONING AND LAND USE:

NORTH: "LC" Wichita YMCA South Branch
SOUTH: "SF-6" Drainage ditch, I-235, church
EAST: "LC" Wichita YMCA South Branch
WEST: "SF-6" Drainage channel, open field, Cleveland Elementary School

PUBLIC SERVICES: This site has access across an open field to the YMCA's parking lot and from there, to Meridian. Traffic demand generated by the site would be minimal. Municipal water and sewer are available to serve the site.

CONFORMANCE TO PLANS/POLICIES: The Wichita Land Use Guide identifies this area as appropriate for commercial development, medium and high density uses. However, the property was rezoned "LC" in 1998 as part of Amendment #1 to the CUP, effectively recommending commercial use for the entire Meridian Outlet Mall tract. The Plan recommends that commercial developments of this size should be located in "planned centers" versus extended strip developments. Such "centers" should be designed with shared internal vehicular and pedestrian circulation, combined signage, similar landscaping and building materials, and combined ingress/egress locations.

The Transportation utilities locational guidelines in the Plan also recommend that utility facilities with significant noise, odor, and other nuisance elements should be located away from residential areas. Adopted policy in the treatment of communication towers is also established in the Zoning Code, regarding the need to document that no existing or approved towers or structures can meet the communication need, or an existing or approved tower or structure can be used, modified, or rebuilt before a new tower is permitted.

RECOMMENDATION: Staff feels that this is a potentially suitable site for a communication tower. The tower would be separated from residential uses by drainage channels, I-235, a school, a large open field, and the YMCA recreational fields. However, the consultant engineers have yet to determine that building this new tower, as opposed to locating on an existing tower in the vicinity, is the only feasible option. In fact, the owner of a nearby tower is claiming that his site would be suitable. Therefore, staff recommends deferring this request until the consultant engineers have completed their evaluation. Should the MAPC vote to approve this request, we recommend the motion and findings as follows:

- A. **APPROVE** the rezoning from "LC" Limited Commercial to "GC" General Commercial.
- B. **APPROVE** the amendment to the Meridian Outlet Mall C.U.P. to allow a communication tower on Parcel 5, subject to the following conditions:
 1. The site shall be developed in general conformance with the approved site plan, with a six-foot tall chain link fence constructed around the perimeter of the site. The 85 foot by 85 foot area shall only be used for a communication tower and related equipment.
 2. All requirements of Section III.D.6.g of the Unified Zoning Code shall be met.

3. The applicant shall file and receive approval for a variance request to reduce the compatibility setback requirement from 345 feet to 50 feet for a 150-foot tall communication tower.
4. The tower shall be a monopole type tower and not exceed 150 feet in height and be in conformance with the site plan as approved and attached hereto.

This recommendation is based on the following findings:

1. The zoning uses and character of the neighborhood: There are large open spaces located on all sides of Parcel 4. The nearest buildings are the YMCA, a school, and a church. A drainage ditch is located just to the west and south of the application area. The closest residential development is approximately 900 feet northwest of the application area.
2. The suitability of the subject property for the uses to which it has been restricted: The site is currently zoned "LC" and is undeveloped. There is no "GC" General Commercial zoning in the area but because it is such a small area and the conditions placed on the request it is unlikely that there are any possible uses of this property, which would be unsuitable for the area.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: The communication tower will not significantly increase trash, noise, or traffic in the area and therefore should not detrimentally affect nearby properties. The residential property to the north and northwest should not be significantly impacted due to the separation by other uses between the tower and the residences.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The Comprehensive Plan identifies this area as appropriate for medium density residential use, however since the remaining portion of the area already is being developed as commercial (YMCA), it is unlikely any of the tract could be utilized for medium density residential.
5. Impact of the proposed development on community facilities: None identified.

Johnson left the meeting; Garofalo assumed the chair.

GOLTRY "We have requested deferral on this case. It is my understanding that the applicant has agreed to the deferral, pending receiving additional information from the consultant regarding the case."

WARREN "So it is deferred?"

KROUT "The applicant is indicating that they would be willing to defer for two weeks. At least one Planning Commissioner has asked us whether or not four weeks would be acceptable."

RUSS EWY "I am the agent for the applicant, with the Baughman Company. We kind of ran a little bit close on this last one with just a two-week deferral. That is why I was asking for four. We might help ourselves out with four weeks. I don't know when that report is due back to your office. It obviously hasn't been sent now, so you haven't had time to review it. I guess four weeks is probably appropriate."

KROUT "I guess we need to see if there is anyone who came here for this hearing who wishes to speak."

GAROFALO "Is there anyone here to speak on this item? Anyone to speak for or against? If not, we will accept a motion."

MOTION: That the item be deferred for 5 weeks to the July 15 meeting.

CONSOLVER moved, **WARREN** seconded the motion, and it carried unanimously (11-0).

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9. **Case No. A 99-9** – The City of Wichita seeks the annexation of properties located north and south of Harry between Greenwich Road and 127th Street East.

KROUT "Commissioners, this is a unilateral annexation case. Bob Isaac, who has worked on this unilateral annexation, has something very important to tell us. This is the second phase in a two-phase annexation plan that was established last year. The City Council did annex a number of properties in this area that were in the planned growth area, according to the Comprehensive Plan, and we are asking you now to make the finding that those areas that are outlined in red, which constitutes the second phase of this proposed annexation, would be consistent with the Comprehensive Plan of the City and County for Wichita to annex those areas."

MCKAY "Would you mind just pointing them out? Just point out the areas that we are talking about."

ISAAC "They are highlighted here in pink. They are right here (indicating) and here."

MCKAY "So those are the areas we are talking about annexing?"

ISAAC "That is correct. The ones in the first phase were approved on January 15 of this year. There is a parcel here, Terra Falls, which came in as a request and should be official tomorrow. The ones in pink are ten full properties, three are platted, seven are unplatted.

As Marvin mentioned earlier, they are all within the New Growth area in the Comprehensive Plan."

GAROFALO "So where would the City limits be then? Could you point that out?"

ISAAC (Indicating) "It is kind of difficult to see. Right where all of the green is."

GAROFALO "Oh, I see. Okay."

KROUT "Would you point to Harry Street? It will help orient them. Harry Street, Greenwich and 127th."

ISAAC "Here is Harry, here is 127th, and here is Greenwich Road. The parts that are not in this table here, outlined in pink, this area here is now in."

WARREN "Where is the County line in relation to 127th Street?"

ISAAC "It is two miles to the east."

CONSOLVER "Is that yellow area the plat that we did about a year ago?"

KROUT "Yes. Remember that it was a zoning case with a plat where the neighbors objected to the lot sizes and added traffic on their streets. There were some special conditions on fencing and how to treat the access points."

GAROFALO "Is McElvoy in?"

KROUT "McElvoy was annexed. Those property owners weren't real excited about that either."

ISAAC "These properties sitting here were left out of the first phase and shouldn't have been, but they were included in the second phase. Those are one of five properties of this annexation."

WHEELER "Is south of Harry not in?"

MCKAY "Parts of it is."

ISAAC (Indicating) This and this is, but this part right here is not in."

WHEELER "South of the 'L' shaped parcel?"

ISAAC "Yes, south of the half-mile line is not in the City."

CONSOLVER "That one large area is a single ownership, isn't it? The one in the middle, between the two annexed areas."

WARREN "Where is Pawnee Street on there?"

ISAAC "At the very bottom of the board. Right here. And here is the half-mile line between Harry and Pawnee. Anything south of that is out in the County."

JOHNSON "Are there any other questions?"

FULP "Mr. Chair, I'm sorry, I had to step out in the hall, what is the issue?"

JOHNSON "It is an annexation."

MCKAY "The pink area is what they are asking to annex."

FULP "It's kind of a rubber stamp vote, isn't it?"

KROUT "Well, it is consistent with the Comprehensive Plan."

WARREN "We really don't have to take action on this, do we?"

KROUT "Yes, you do."

MOTION: That the Planning Commission find that the annexation is consistent with the Comprehensive Plan.

CONSOLVER moved, **PLATT** seconded the motion, and it carried unanimously 10-0-1.
Fulp abstained.

10. Other matters

JOHNSON "Is there any other business?"

KROUT "I just want to mention that my note to you indicated that we will discuss the County and City CIP next week is wrong. It will be July before you see a City and County CIP. We will schedule an Advance Plans meeting. We do have plenty to discuss on the Comprehensive Plan, though, so we do want to have an additional meeting after Subdivision Committee.

I mentioned the Telecommunications and Tower study that we will be doing. I also wanted to mention to you that the West Street car lot, north of Murdock, if you remember that case, has been sent back by the City Council for re-consideration. We did have protest petitions. Those protest petitions were withdrawn, but they were withdrawn too late to be official, so there is uncertainty as to what the neighborhood is feeling on that case. It will be on the same agenda, I think, as another car lot case, which is just 100 feet to the south at the former Sonic restaurant on the west corner of Murdock and West Street."

WHEELER "I thought it was interesting what the City Council did with the Old Town overlay."

GAROFALO "Yes. They completely ignored us. Completely."

KROUT "Well, there may have been some pre-dispositions."

JOHNSON "I think one of the Commissioners was said earlier that we were supposed to set an example of what we say and be heard. I was just wondering if we were heard on that case."

The meeting unofficially adjourned at 4:50 p.m.

State of Kansas)
Sedgwick County) ^{ss}

I, Marvin S. Krout, Secretary of the Wichita-Sedgwick County Metropolitan Area Planning Commission, do hereby certify that the foregoing copy of the minutes of the meeting of the Wichita-Sedgwick County Metropolitan Area Planning Commission, held on _____, is a true and correct copy of the minutes officially approved by such Commission.

Given under my hand and official seal this _____ day of _____, 1999.

Marvin S. Krout, Secretary
Wichita-Sedgwick County Metropolitan
Area Planning Commission

(SEAL)